Local Government and Transport Committee

15th Report, 2006 (Session 2)

Stage 1 Report on the Transport and Works (Scotland) Bill

Volume 1: Report
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Local Government and Transport Committee

Remit and membership

Remit:

To consider and report on matters relating to local government (including local government finance), cities and community planning and such other matters (excluding finance other than local government finance) which fall within the responsibility of the Minister for Finance and Public Services; and matters relating to transport which fall within the responsibility of the Minister for Transport.

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Local Government and Transport Committee

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The Scottish Parliament

Local Government and Transport Committee

15th Report, 2006 (Session 2)

Stage 1 Report on the Transport and Works (Scotland) Bill

The Committee reports to the Parliament as follows—

SUMMARY OF RECOMMENDATIONS

1. The Committee is satisfied with the adequacy of the Executive's consultation on the proposals contained within the Bill (paragraph 33).

2. The Committee notes the contents of the Bill's Policy Memorandum and accepts that it provides adequate explanation of the policy intentions behind the Bill (paragraph 34).

3. The Committee supports the principle that applications for transport developments should be 'frontloaded' so as much consultation takes place, and as much information is provided to those potentially affected by the project, as possible, in advance of the application being made. The Committee considers that this will provide significant benefits in helping to improve the quality of applications. The Committee notes the broad support among witnesses for the policy of frontloading applications, but wishes to highlight two points made in evidence (paragraph 74).

4. First, the Committee believes there should be monitoring and proper assessment of the standard of promoters’ engagement with the public ahead of making an application (paragraph 75).

5. The Committee seeks information from the Scottish Executive on how the standard of notification and engagement with the public will be maintained. The Committee understands that the Executive will assess the application to determine that it complies with the defined procedural considerations, which will include the question of engagement with the public. The Committee recommends that the Executive provides more information on how it will assess the level of engagement carried out by promoters, and whether certain standards have to be met that extend beyond simply stating that engagement has occurred (paragraph 77).
6. Second, the Committee notes the comments made by witnesses about the level of information provided by promoters in support of their applications. The Committee received evidence that some interested parties will be looking for general information about a proposed scheme, whilst others may wish detailed information so that they are able to understand how a project specifically affects them. The Committee recommends that any assessment of applications carried out by the Scottish Ministers ensures that information is presented in such a way that the requirements of these two difference audiences is met (paragraph 78).

7. Whilst the Committee notes concerns which have been expressed about the potential costs on promoters, if promoters have already been carrying out good practice in relation to pre-application activity, then they may not see a significant increase in costs under the new arrangements (paragraph 84).

8. While the Committee sympathises with the burden of work which objectors have to carry, nevertheless it is of the view that it would not be appropriate for public finances to be utilised to provide financial support for objectors to a particular project. The Committee has recommended that as much information should be provided to those potentially affected by a project as possible, and the Committee further recommends that reasonable time is permitted to allow objectors to present their case. The Committee hopes that this will go some way towards striking a reasonable balance between promoters and objectors (paragraph 95).

9. The Committee recognises the importance of the correct balance being struck between enabling those with a vested interest in a proposed transport infrastructure project the opportunity for their views to be heard through an inquiry and the importance of a transport project being able to proceed in a timely manner (paragraph 103).

10. The Committee heard from a range of witnesses who argued that the right to require an inquiry should be extend to include other organisations. The Committee therefore welcomes the Minister for Transport's commitment to extend the right to call an inquiry or hearing to navigation authorities, Network Rail and regional transport partnerships (paragraph 104).

11. The Committee notes that the replacement of Private Bill Committees was a key feature of the Procedures Committee’s 4th Report, Private Legislation, which was unanimously supported by the Parliament in a debate in May 2005. There is a widespread acceptance of the benefits to be gained from the abolition of Private Bill Committees. MSPs who have served on previous Private Bill Committees have worked hard to understand the technical issues involved, but it is clear that elected politicians are not intrinsically well qualified to carry out such work. The Committee believes that Parliamentary involvement in the approval of transport related projects should take place later in the process and this will be discussed later in this report. The Committee therefore supports the proposal to end the use of Private Bill Committees (paragraph 116).
12. The Committee supports the principle of the use of a Scottish Executive appointed Reporter to examine objections to transport related projects. The Committee notes the comments of some witnesses that a reporter-based system will allow objectors to participate in a less adversarial environment than a Private Bill Committee. It remains to be seen whether this will be the case, but the Committee nevertheless welcomes the commitment of the Chief Reporter to aim to create such an environment (paragraph 123).

13. The Policy Memorandum states that the costs of an examination to SEIRU are ‘likely to be recovered from the promoter.’ The Committee recommends that the Minister provides clarity on whether this will in fact be the case. The Policy Memorandum also makes reference to the implications of the new arrangements for SEIRU’s business planning and the Committee also notes the Minister’s comments about SEIRU being resourced with appropriate expertise. The Committee recommends that SEIRU is adequately resourced to ensure no delays take place in the consideration of objections which could be attributed to a lack of resources (paragraph 128).

14. The Committee recommends that reports made by reporters should be made public after the Minister has had a reasonable time, not more than two months, to consider them (paragraph 131).

15. The Committee notes that ‘time efficiency’ in the new arrangements is an objective of the Minister, and the Committee welcomes this emphasis as a way of speeding up the delivery of transport projects in Scotland. As discussed above, the Committee received different views on whether the new process will actually lead to time savings. The Committee notes that achieving time savings may depend on the quality of the pre-application activity which promoters will be required to undertake and the degree to which this leads to a reduction in objections. If this pre-application activity is successful than the length of time from the application to the making of an order is likely to be shorter than the timescales under the current Private Bill arrangements (paragraph 141).

16. The Committee is of the view that it is appropriate that, in the last resort, the Minister should have the right to overturn a recommendation of a reporter. In such circumstances the Committee recommends that the Minister should make a written statement, with reasons for his/her decision, to the relevant Committee. It would be open to the Committee to invite the Minister to a meeting of the Committee to explain his/her decision (paragraph 150).

17. The Committee invites the Procedures Committee to consider the most appropriate way of giving effect to the above recommendation (paragraph 151).

18. The Committee notes that projects which are not to be subject to Parliamentary approval will nevertheless have been the subject of various processes of scrutiny at different levels. The Committee is not persuaded that there is an additional need for Parliamentary scrutiny, within the
provisions of this Bill, of those projects which are not of national
significance (paragraph 164).

19. The Local Government and Transport Committee notes the report of the
Finance Committee. The Committee would be content for the Finance
Committee to take forward its recommendations via discussions with the
Minister for Finance and Public Service Reform. The Committee notes that
many of the recommendations of the Finance Committee could be taken
forward via good practice and protocols between the Parliament and the
Executive rather than on the face of this Bill (paragraph 167).

20. The Committee notes the Minister’s comments regarding the definition
of a nationally significant development and that he gave the M80 project and
the Edinburgh Airport Rail Link as examples. The Committee considers that
in order to understand the practical impact of the Bill, this definition will be
of some importance. The Committee notes that national developments will
be identified within the National Planning Framework. However, the
Committee notes that what would be considered to be a “national
development” is not specifically defined within the current Planning etc.
(Scotland) Bill (paragraph 175).

21. The Committee considers that further examples of what in practice
would, or would not, constitute a “national development” would assist its
understanding of the Bill. The Committee recommends that the Minister
provides further examples, in addition to the ones highlighted above, to aid
its understanding of this issue and to address the confusion on this subject
that currently seems to exist (paragraph 176).

22. The Committee notes the broad support for the proposals to enable
access to land as set out in section 18 of the Bill and, on the basis of the
assurance given by the Minister that appropriate health and safety
considerations will be taken into account, endorses the proposals
(paragraph 185).

23. In the light of the explanations given by the Minister and by Transport
Scotland, the Committee endorses the proposals for enabling voluntary
purchase schemes as set out in the Bill (paragraph 193).

24. The Committee notes the proposal which was made in evidence that the
EU Habitats Directive should apply to orders made under the Bill and to
orders made under the Harbours Act 1964. The Committee seeks the view of
the Scottish Executive on this proposal (paragraph 196).

25. The Committee endorses the proposal to replace Special Parliamentary
Procedures by order making procedures. While noting the arguments given
in evidence by the Lerwick Port Authority that the existing procedure should
be retained, the Committee acknowledges that the inclusion of navigation
authorities in the list of bodies whose unresolved objections would trigger
an inquiry goes some way to strengthening the position of harbour
authorities (paragraph 204).
26. The Committee welcomes the Minister’s commitment that the fees to be charged to heritage railways under the proposed order making process would be no greater than they are currently, and, on the basis of his assurance, it endorses the intention of section 21 to replace Light Railways Orders with the order making powers proposed by the Bill (paragraph 214).

27. The Committee considers that there is broad overall support for the proposals contained in the Transport and Works (Scotland) Bill. In this report, the Committee has identified certain places where the proposals in the Bill could be further improved or where the Committee wishes to receive additional information from the Scottish Executive. Subject to these caveats, the Committee recommends to the Parliament that the general principles of the Bill be approved (paragraph 215).

INTRODUCTION

Introduction of the Bill

28. The Transport and Works (Scotland) Bill was introduced by the Minister for Transport, Tavish Scott MSP, on 26 June 2006. The Bill was accompanied by a Policy Memorandum and a Financial Memorandum. The Parliament at its meeting of 28 June 2006 agreed that the Local Government and Transport Committee be designated as the lead committee, and that the Bill should also be referred to the Procedures Committee, for consideration and to report to the lead committee.

29. The report of the Procedures Committee, together with the reports of the Finance Committee and the Subordinate Legislation Committee are attached at Annexe A.

30. Eighteen organisations and individuals responded to the Committee’s call for written evidence and a further 7 supplementary submissions were made. The Committee took oral evidence on the Bill from witnesses at its meetings of 5 September 2006, 12 September 2006, 19 September 2006, 26 September 2006 and 3 October 2006. The minutes of these meetings are attached at Annexe B and extracts from the Official Reports of those meetings, together with associated written submissions and other written evidence, comprise Annexe C. The Committee wishes to express its thanks to all those who provided written and oral evidence on the Bill.

Aims of the Bill

31. At present, major transport developments in Scotland, excluding roads and harbours, are authorised through Private Acts of the Scottish Parliament. This Bill, if enacted, would establish a new system for authorising major rail, tram, inland waterway and guided bus system projects. It would replace the current private legislative system with a ministerial order making system, with Parliamentary approval being required for projects of national significance. The Bill would also replace special parliamentary procedure for certain road developments where there are objections from certain statutory bodies. New procedures for the making of pilotage orders are proposed and the Bill would allow Scottish Ministers to make grants and loans for the voluntary purchase of properties affected by a major
transport infrastructure project which do not fall within the current compulsory purchase regime.

Consultation

32. The Scottish Executive conducted discussions with a range of stakeholders and published a consultation document in connection with its proposals. Details of the consultation process and the response obtained are set out in the Policy Memorandum which accompanies the Bill.

33. The Committee is satisfied with the adequacy of the Executive’s consultation on the proposals contained within the Bill.

Policy memorandum

34. The Committee notes the contents of the Bill’s Policy Memorandum and accepts that it provides adequate explanation of the policy intentions behind the Bill.

Report by the Procedures Committee

35. The Committee notes the report of the Procedures Committee, which was designated as a secondary committee to consider the Bill. The Procedures Committee, in its 4th Report 2005 on its inquiry into private legislation, recommended that there should be a new statutory system which would allow the principal responsibility for handling applications for such transport projects to be transferred to the Executive, but subject to appropriate Parliamentary oversight. This current Bill was developed in response to the recommendations of the Procedures Committee.

36. The Committee addresses the issues raised by the Procedures Committee later in this report.

Report by the Subordinate Legislation Committee

37. The Committee notes the report of the Subordinate Legislation Committee, which considered the delegated powers provisions in the Bill. The Committee notes that the Executive has agreed to bring forward amendments at Stage 2 to address most of the concerns raised by the Subordinate Legislation Committee during its consideration of the Bill, and that it will reflect further on the other concerns which the Subordinate Legislation Committee raised.

38. In particular, the Committee notes the concern of the Subordinate Legislation Committee about the width of the powers given to Ministers under section 27(6) which, coupled with other sections, include the power to amend earlier private Acts and also the Act which will follow on from this Bill.

Financial memorandum

39. The Committee notes the report of the Finance Committee, which considered the Financial Memorandum which accompanies the Bill. The Finance Committee
sought written evidence from organisations financially affected by the Bill and then took oral evidence from the Executive Bill Team.

40. The Committee addresses the issues raised by the Finance Committee later in this report.

THE CURRENT SYSTEM OF APPROVAL

Approval of Major Railway, Tramway, Canal and Guided Bus Projects

41. The current Private Bill procedures for authorising railway, canal and tramway developments can be summarised as follows:

- Promoter develops proposals and undertakes initial consultation
- Promoter submits Private Bill to the Scottish Parliament
- Presiding Officer decides whether Private Bill is competent – if not process ends
- Formal 60 day period of objection to proposals. Private Bill committee established
- Formal consultation period ends
- Preliminary Stage: Private Bill Committee takes evidence on the general principles of the Bill and whether it should proceed as a Private Bill. Committee produces report with recommendations for whole Parliament.
- Preliminary Stage debate. Scottish Parliament votes as to whether the Bill should proceed – if not process ends
- Consideration Stage: This occurs in two phases:
  (1) Committee meets to hear evidence and consider objections to the Bill or an Assessor carries out this work on behalf of the Committee. The Committee will prepare a Consideration Stage Report after this phase of their work.
  (2) Committee considers amendments to the Bill, which can only be introduced by members of the Committee
- Final Stage: This occurs in two stages:
  (1) Parliament meets to consider and vote on amendments to the Bill
  (2) Debate and vote on whether the Bill should be passed – if not the process ends
- Bill receives Royal Assent to become an Act
THE PROPOSED NEW SYSTEM

42. The new system for authorising major railway, tramway, guided bus and canal developments which would be created following the passage of the Transport and Works (Scotland) Bill can be summarised as follows:

- The promoter of a development formally notifies all affected persons of the proposed development and consults with affected parties, defined statutory bodies, local MSPs and local community based organisations

- The promoter sends documentation to the Scottish Ministers, not less than six weeks prior to the intended application date, for pre-application scrutiny

- The promoter applies to the Scottish Ministers for an order to be made authorising the proposed scheme

- Once the application has been made concerned parties can object to the proposals within a designated time period

- The Scottish Ministers, once the objection period closes, then decide whether the application is correct in procedural terms

- If the Scottish Ministers decide in favour then an independent reporter is appointed to conduct an inquiry or hearing which will conclude with the reporter producing recommendations within a formal report submitted to Scottish Ministers

- The Scottish Ministers decide to accept, modify or reject the reporter's recommendations, and if appropriate, make a final order which will be subject to parliamentary approval if the scheme is of national significance. If not, then the order is made as a local order.

Voluntary Purchase

43. The Bill proposes amendments to the Transport (Scotland) Act 2001 which would allow the Scottish Ministers to make grants or loans to purchase certain eligible properties which “…the use or enjoyment of which are, or may be affected…” by any transport scheme authorised under an order allowed by the Bill or any Private Act of the Scottish Parliament which was passed prior to the provisions of the Bill coming into force. An eligible property is one which is, or may be, affected by the construction or operation of the proposed transport project but not covered by the existing compulsory purchase legislation.

Special Parliamentary Procedure

44. How the current system works: Although the vast majority of road, harbour and navigation orders currently made by Ministers do not involve Parliament, there are certain circumstances when Ministers may need to gain parliamentary approval before any order can take effect.
45. The Scotland Act 1998 (Transitory and Transitional Provisions) (Orders Subject to Special Parliamentary Procedure) Order 1999 requires Scottish Ministers to secure a Special Procedure Order before an Order authorising the construction of certain transport related projects made under certain enabling Acts can have effect. In certain circumstances a Special Procedure Order can only have effect if it has obtained parliamentary approval through an Act of the Scottish Parliament. The requirement to secure such an Act would arise in the following circumstances:

46. **Harbours Act 1964:** Scottish Ministers want to enact a harbour revision order, or harbour empowerment order, which authorises the compulsory purchase of land. This requirement also extends to harbour reorganisation schemes confirmed by the Scottish Ministers.

47. **Roads (Scotland) Act 1984:** This Act defines several instances where Scottish Ministers need to secure an Act of the Scottish Parliament to give effect to certain road orders. These include:

   - Where Scottish Ministers seek to designate/de-designate a road as a trunk road and a relevant roads authority objects to the proposed change in designation and does not withdrew its objection.
   - Where Scottish Ministers seek to designate a road as a special road and a relevant roads authority, navigation authority or water authority objects to the designation and do not withdraw their objection. Special parliamentary procedure also applies to the designation of special roads and roads, other than special roads, that cross or join public roads.
   - Where a roads authority proposes to build a bridge over or tunnel under navigable water which is likely to restrict or impede its operations or interfere with reasonable requirements of navigation and a navigation authority objects to the proposal. If these objections remain unresolved then the roads authority can make application, via special parliamentary procedure, for a determination. A similar process is also followed in respect of objections by a navigation authority to an order authorising the discontinuation of the operation of certain swing bridges.

48. In all other circumstances a Special Procedure Order is laid before Parliament and is subject to annulment by resolution within 40 days. If it is not annulled within that period then the Order will come into force after the 40 day period or on a date specified in the Order.

49. **How the system proposed in the Bill would work:** The Bill proposes amendments to the Acts mentioned above so as to ensure conformity of approach in respect of the consideration and authorisation of orders relating roads and harbours, as described below:

50. **Roads (Scotland) Act 1984:** This Act would be amended to require Scottish Ministers to seek an affirmative resolution of the Scottish Parliament in respect of

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1 A ‘special road’ is any road provided under Section 7 of the Roads (Scotland) Act 1984
any roads order authorising the construction of a road which constitutes a development of national significance. The current legislative requirement to obtain an Act of the Scottish Parliament to authorise such a development would be repealed.

51. **Harbours Act 1964:** This Act would be amended to require Scottish Ministers to seek an affirmative resolution of the Scottish Parliament in respect of any order authorising a harbour development that constituted a development of national significance. The current legislative requirement to obtain an Act of the Scottish Parliament to authorise such a development would be repealed.

52. The Executive states in the Policy Memorandum which accompanies the Bill (Scottish Parliament 2006) that the purpose of these changes is to “...ensure consistency in the authorisation of nationally significant developments”

53. **Pilotage Act 1987:** This Act would be amended to require Scottish Ministers to deal with unresolved objections to applications for pilotage orders without recourse to the Scottish Parliament. It would also establish a system for Ministerial decision making, which would require a public inquiry or hearing to be held prior to any decision being taken where there were outstanding objection(s) to the proposed order.

54. **Miscellaneous:** In addition to the provisions described above, the Bill also includes the following provisions:

- Scottish Ministers will be required to publish, and also lay before the Scottish Parliament, an annual report on the operation of the order making system that would be introduced by the Bill.

- Scottish Ministers would no longer be able to authorise the construction of a ‘light railway’ using powers available under the Light Railway Act 1896, e.g. the 3.5km freight railway in Ayrshire that was authorised under The Greenburn Light Railway (Scotland) Order 2003. It is important to remember that a ‘light railway’ is different from ‘light rail’ which is a term normally used to describe a tram, or tram like, system.

**APPLICATIONS**

**Frontloading**

55. The Bill proposes to change the level of detail and consultation required by promoters at the pre-application and application stages of the approval process for transport infrastructure projects. The Policy Memorandum states that the policy intentions of the frontloading of the application process are twofold—

- to encourage and ensure meaningful public participation in order to assess the impact of the development and improve the confidence in and effectiveness of the process;

- to assure the quality and relevance of the information provided in support of the application so as ensure the efficiency of the subsequent process
stages of examination, consideration, determination and authorisation in an open and transparent manner that has the confidence of all those involved.'

56. The Policy Memorandum details the way in which the Scottish Executive envisages transport infrastructure projects will be developed in the future—

'It is important that transport decisions are well-founded, appropriately appraised, informed by other policy and development priorities, subject to participative democratic scrutiny and take due account of environmental considerations and the concept of sustainable development and intergenerational equity. Most transport initiatives are likely to arise as a means of realising the objectives within the national transport strategy, regional transport strategies, local transport strategies, the National Planning Framework or strategic and local development plans.'

57. The Policy Memorandum goes on to explain the pre-application procedure promoters would have to undertake in advance of making an order under section 1 of the Bill—

'The promoter will be obliged subsequently to develop more detailed proposals and be required to serve notice on and engage with those whose land or interest in land is directly affected by the proposed development, for instance any person with an interest who potentially will be affected by compulsory purchase.

In addition to notifying all affected parties the promoter will be required to enter into meaningful engagement with the affected parties as well as statutory bodies, local MSPs and local community based organisations.'

58. The Minister for Transport stated that there were benefits to the ‘frontloading’ of the application process—

'We expect the bill to build on the existing processes to ensure that a full and thorough appraisal process takes place involving the local community, local MSPs and, where appropriate, the Parliament. The onus will be on promoters to ensure that engagement takes place with the right people at the right time, and they will be held to account for that. Although anyone will be able to promote a project under the bill, the parties that are most likely to do so are Transport Scotland, Network Rail and the regional transport partnerships. To pick up a point that David McLetchie made in a previous meeting of the committee, that front-loading process might involve additional investment and effort at the start but, in return, we expect that the legislation will enable us to provide an efficient and structured authorisation process once an application has been submitted.'

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2 Policy memorandum, para 93
3 Policy Memorandum, para 40
4 Policy Memorandum, para 43, 44
5 Col 4048
59. The frontloading of the application process attracted general support from witnesses. Karen Gribben of Network Rail stated—

‘It is difficult to compare the time that each project takes, because they are all incredibly specific. A lot of it comes down to how well the promoter prepares in advance, which is a fundamental issue that the bill seeks to address in front-loading the work to ensure clarity and transparency, and to how many properties are affected.’

60. Douglas Muir of Midlothian Council explained how the frontloading of the process proposed by the Bill would impact on the work of promoters, suggesting that it would lead to a more efficient process—

‘It appears that the bulk of the work that the promoter has to do will be done in advance of an order’s being made, whereas we submitted certain things at different stages as we went through the private bill process. A promoter will not save much time at the beginning of the process, because it will probably have more work to do before the process starts, but I am hopeful that once the process starts the promoter will get through it more quickly because it would not be continually bringing in fresh evidence or documentation. The promoter might be asked for some explanatory documentation to back up what it has submitted, but the bulk of the information should already be lodged with the reporter.’

61. James McCulloch, Chief Reporter, Scottish Executive Inquiry Reporters Unit, stated that the frontloading of the process could bring the advantage of potentially reducing the number of objections made to an application—

‘A developer who is seeking an authorisation under the act will be expected to front-load their proposal […]. That means that, before a developer seeks an authorisation from ministers and the Parliament, they will ensure that they have engaged properly with the community that is affected by the development. That will have an effect on the nature and range of the objections that have to be processed by way of an inquiry hearing or written submission.

We expect there to be better engagement with the community and […] a reduction in the misunderstandings that can lead to objections being made, and then maintained throughout the process. The inquiry or examination stage at the end of the process should therefore be shorter, which should make the process more straightforward and concentrate minds on the crunch issues that are in dispute between the statutory bodies, the community and the promoter. We hope that the inquiry stage will be shorter.

62. According to the Policy Memorandum the frontloading of the process will also involve provision of information about the environmental impact of the project—

6 Col 4029
7 Col 3944
8 Col 4036
‘The promoter will be required to liaise with relevant bodies so as to obtain the information necessary to undertake an environmental impact assessment, in accordance with UK and European legislation, as well as being able to provide the Scottish Ministers with sufficient information to enable the Scottish Ministers to form an assessment as to whether the proposed work is of such over-riding public interest that it may impact land that is designated as a Special Area of Conservation, a Special Protection Area or a Ramsar site.’

63. SEPA in their written submission to the Committee supported these provisions—

‘SEPA considers it extremely important that all applications are accompanied by sufficient information that allows the agency to provide full and proper comments about the likely environmental effects of a proposal when consulted. [...] This issue is important in respect of the policy objective of introducing an efficient and effective process for consideration of such proposals as it ensure that appropriate information is before decision makers at the time of application, which should reduce delay.’

64. John Thomson from SNH also supported the frontloading of the process—

‘Inevitably, one must consider matters from the promoter's standpoint. However, the reality is that information will have to be assembled at some point, so there is much to be said for bringing it together at an early stage. One would hope that there would be constructive engagement with the statutory consultees and other interests, who could help to advise on the information that was needed and, indeed, on the direction of the project. I do not think that having to provide information before a project begins will add to the burden for a developer or promoter.’

65. Whilst John Halliday of Strathclyde Partnership for Transport broadly supported the proposal for a frontloading of the application system he did highlight a concern that this would create an added risk for promoters—

‘It has been assessed that that will cost promoters an additional £1 million. In the round, that is probably not a bad thing, in that it will mean that more work will be put in at the start of a project. One would expect that by the time an order is applied for, a lot of the work will have been done. That presents a danger for promoters. If an application for an order ultimately fails, there is a higher risk of the relevant public authority having to bear that cost. Risk is a consideration, but the new system will certainly provide a good incentive to get things right.’

66. A number of witnesses, whilst also broadly welcoming the proposed frontloading of the process, wanted reassurance that meaningful public participation would occur. Joanne Teal of McGrigors in oral evidence to the
Committee, for example, proposed that the level of consultation carried out by promoters should be measured and assessed before the application process can progress to the next stage—

‘A qualitative threshold could be set so we could say, "Until you come to me with a package that shows that you have spoken to people and anticipated concerns that arise in common property-holding and employee situations, and until we think that you have undertaken a proper consultation and got the usual suspects and usual concerns out of the way, don't bother." That is front-loading’

67. Joanne Teal outlined the reason for including such a measure—

‘It is important for the process to be seen to be impartial. If a member of the public is unhappy with the level of consultation, and the decision about the adequacy of the consultation is taken by someone who represents the promoter, they will not feel that the decision is impartial. However, there could be a role for the reporter earlier in the process.’

68. Alison Bourne, an objector to the Edinburgh Tram (Line One) Bill, also raised the issue of an assessment of the quality of the promoter’s consultation—

‘Unless there is an independent and on-going peer review from the start, there will be the same problems as with tramline 1. Major issues will not be addressed early so it will, by the time a bill is introduced, be too late to make the necessary decisions. Unless something is done to address that, the problems will be the same.’

69. Another issue raised by witnesses was the level of information which should be provided by the promoter in support of the application. The Policy Memorandum emphasises the importance of providing this information—

‘The efficiency of the process will, to a large extent, be conditioned by the standard of the information provided in support of the application. The policy objective, as has been mentioned previously, is to enable decisions to be made quickly; poor or inadequate documentation that requires clarification throughout the process will inevitably prolong the process due to ongoing uncertainties for promoters, supporters and objectors.’

70. Alex Macaulay of South-east Scotland Transport Partnership (SESTRAN) stated that it may be difficult for promoters to gauge the appropriate level of detail for information presented to the public—

‘We could consider ways of simplifying the technical analysis and making it more strategic and less detailed. That is fine in concept, but when we consult

13 Col 4015
14 Col 4018
15 Col 3998
16 Policy Memorandum para 49
the public, we might find that they want the detail. Alternatively, if we present them with the detail, they might really want the strategy.’

71. Paul Lewis from Scottish Natural Heritage also raised the issue of the level of information which should be provided by the promoter—

‘The problem will always be defining what level of detail is necessary for which project, because they will be different. It would have to be agreed in advance. When we ask for detailed information, we do not mean that we want highly specified technical drawings of each phase.’

72. Bruce Rutherford of Scottish Borders Council highlighted to the Committee financial and technical reasons why the detail of a project may not be available at the start of the application process and cautioned against raising expectations about the level of information which might be provided—

‘When taking forward a private bill, one has only so much detail on the design of the project, because promoters will not commit to spending £2 million or £3 million to work up full detailed designs unless they know that the project will go ahead. I do not know whether the situation will be different under the proposed legislation. People expect us to give them answers in minute detail; they may want to know whether a fence will be put at the bottom of their garden. We have to try to manage such questions. In the planning process, people are aware that we do not always have such details, so adoption of that model may help us to manage expectations. It will not cut out all the pain that people experience, and they will continue to have issues hanging over their heads, but they will understand what point has been reached in the life of the project.’

73. The Policy Memorandum summarises the Executive’s approach to the frontloading of the application process—

‘The Scottish Ministers are keen that there is much more public engagement through meaningful participation and involvement so as to increase acceptability of proposals and change perceptions of approval processes that are understood as mere technical exercises… Public participation will permit proper, considered identification and assessment of the impacts, particularly on the natural and built heritage.

The policy intention is that all relevant information, in support of an application, must be available at the time of the application. To realise that objective, promoters will be provided with clear guidance on the type of information required and prior to making the formal application the information will be subject to a formal pre-application scrutiny. This approach if executed properly should enable any subsequent examination of the

17 Col 3964
18 Col 3979
19 Col 3941
20 Policy Memorandum, para 95
development to concentrate on the basis of shared agreed information on the impact on the chosen location and the environmental impact.'

74. **The Committee supports the principle that applications for transport developments should be ‘frontloaded’ so as much consultation takes place, and as much information is provided to those potentially affected by the project, as possible, in advance of the application being made. The Committee considers that this will provide significant benefits in helping to improve the quality of applications. The Committee notes the broad support among witnesses for the policy of frontloading applications, but wishes to highlight two points made in evidence.**

75. **First, the Committee believes there should be monitoring and proper assessment of the standard of promoters’ engagement with the public ahead of making an application.**

76. **The Committee notes that applications will be expected to provide—**

   ‘A concise factual account of the arrangements made and conducted in relation to the notification and presentation of the proposals and the level and extent of engagement with those directly affected by the proposals, the general public, community groups and statutory bodies’

77. **The Committee seeks information from the Scottish Executive on how the standard of notification and engagement with the public will be maintained. The Committee understands that the Executive will assess the application to determine that it complies with the defined procedural considerations, which will include the question of engagement with the public. The Committee recommends that the Executive provides more information on how it will assess the level of engagement carried out by promoters, and whether certain standards have to be met that extend beyond simply stating that engagement has occurred.**

78. **Second, the Committee notes the comments made by witnesses about the level of information provided by promoters in support of their applications. The Committee received evidence that some interested parties will be looking for general information about a proposed scheme, whilst others may wish detailed information so that they are able to understand how a project specifically affects them. The Committee recommends that any assessment of applications carried out by the Scottish Ministers ensures that information is presented in such a way that the requirements of these two difference audiences is met.**

**Financial impact on promoters**

79. **The Financial Memorandum accompanying the Bill refers to the likely costs which will fall on the promoter under the new process—**

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21 Ibid, para 97
22 Policy Memorandum, para 50
‘The authorisation process of a new project under the Bill is expected to cost £7,053,000. The costs are based on evidence from the transport-related Private Bills. Although £7,053,000 seems like a substantial amount of money, it largely reflects the costs incurred by promoters under the current Private Bills process. The additional cost (17% increase) is explained through more specific work on route design (partly generated through the ability to access land), more extensive engagement with those affected by the proposal and increased publicity, making use of the internet to ensure widespread knowledge about the proposals and the possibility of incurring a fee comparable to the cost of the examination.’

80. Whilst John Halliday of Strathclyde Partnership for Transport broadly supported the proposal for a front loading of the application system he did highlight a concern that this would create an added risk for promoters due to the increased up-front costs—

‘It has been assessed that that will cost promoters an additional £1 million. In the round, that is probably not a bad thing, in that it will mean that more work will be put in at the start of a project. One would expect that by the time an order is applied for, a lot of the work will have been done. That presents a danger for promoters. If an application for an order ultimately fails, there is a higher risk of the relevant public authority having to bear that cost. Risk is a consideration, but the new system will certainly provide a good incentive to get things right.’

81. The Finance Committee commented on the question of the likely costs on promoters in its report to the Local Government and Transport Committee on the Bill. This can be found at Annexe A, and stated—

‘The Financial Memorandum estimates the new process could result in increased costs to the promoters of transport projects. The actual cost will depend on the scale of the project but an estimate of an additional £1m per project is given. However, in evidence Scottish Executive officials stated that this figure has since been calculated at £600,000. This increased cost will mainly arise from a greater requirement to consult the public at pre-application stage. As some promoters already undertake a high level of pre-application consultation, then such promoters are unlikely to bear additional costs as a result of this duty.’

82. This last view was also supported by comments in the Policy Memorandum which stated—

‘Some promoters may already be following good practice in relation to engagement and publicity as formalised in the Bill. If this is the case, the promoter will only incur an increase in costs through the fees.’

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23 Explanatory Notes, para 122
24 Col 3916
25 Finance Committee, para 9
83. According to the Executive, although the fees will be set through secondary legislation, if the fee were to reflect the cost of an average examination, this would be £20,000.

84. In summary, therefore, whilst the Committee notes concerns which have been expressed about the potential costs on promoters, if promoters have already been carrying out good practice in relation to pre-application activity, then they may not see a significant increase in costs under the new arrangements.

OBJECTIONS

Cost/ support/ workload for objectors

85. The Committee considered the burden on objectors in presenting their cases effectively, both in the context of the existing Private Bill system and under the new arrangements which are proposed in the Bill.

86. Jackie Baillie MSP, who was Convener of the Edinburgh Tram (Line One) Bill Committee, told the Committee that—

‘Objectors must provide witness statements and rebuttals of other statements. The process consumes a huge volume of time, not just for the Parliament and parliamentarians, but for objectors. The bill offers a much more balanced and sensible approach to dealing with transport projects.’

87. She commented that—

‘Some of the submissions that the Local Government and Transport Committee has received from objectors suggest that, in order to rebalance their role in the process, they would like to be staffed with experts. That proposal may be worthy of your consideration.’

88. Alison Bourne, who was an objector to the same Private Bill, said in her written evidence, that—

‘…the presentation of evidence to substantiate the reasons for those concerns was confusing, challenging extremely time-consuming and costly, particularly for those objectors who chose to engage expert witnesses.’

and—

‘…the time required of objectors and, particularly, lead objectors, many of whom were in paid employment and who required to take leave in order to satisfactorily fulfil their obligations, was excessive.’

89. Turning to the proposed new arrangements, she said—

26 OR Col 3901
27 OR Col 3906
28 Written evidence Alison Bourne
'I would agree with the principle of considering providing financial aid to objectors who are unfamiliar with the legal and procedural issues relating to an inquiry. This is on the basis that, as schemes are generally proposed “for the common good”, it is unfair that an objector should have to bear any financial burden in order to protect their individual position. Objectors are unlikely to have asked for the scheme and should not require to incur expense in order to preserve/ protect their interests.'

90. TRANSform Scotland expressed a similar view in its written evidence, but noted that financial assistance was not available to objectors to trunk road and harbour projects—

'Ve would welcome provisions within public inquiry rules for objectors to receive financial assistance. However, should this provision only be open to those objecting to …public transport and inland waterway projects, it would open the discrepancy of objectors to public transport projects receiving financial assistance, whilst objectors to trunk road and harbour developments did not. This would be unacceptable.'

91. In her oral evidence, Alison Bourne, referring to the demands which might be put on objectors giving evidence before a reporter, told the Committee—

'As an ordinary member of the public I would be concerned about the timescale in giving evidence to a reporter. One of the primary objectives of the bill is to speed up the process, but our experience was that the volume of work in putting evidence together was a real problem. It was a particular problem for me, because I was covering the issues to do with the Western general hospital. I could not possibly have put that evidence together within a few days if it had been required for a reporter.'

92. However, Odell Milne, who had also been an objector to the Edinburgh Tram (Line One) Bill, said in oral evidence—

'A reporter would be easier in some ways. Preparing a week's evidence, for example, means that one does not have to keep on going back over the evidence.' and—

'If it all took place in a week and one was committed enough, one could take a week's holiday, go to the reporter and make one's points. There are attractions in the idea of there being a reporter, provided that people are given adequate time to prepare.'

93. James McCulloch, the Chief Reporter with the Scottish Executive Inquiry Reporters Unit (SEIRU) told the Committee that—

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29 ibid
30 Written evidence TRANSform Scotland para 4.2
31 OR Col 4000
32 OR Col 4001
33 OR Col 4001
‘My understanding is that, in Scots law, legal aid may be available to objectors in some circumstances, but it is not generally available in practice.’

and—

‘I can see why the idea of local residents being provided with technical assistance is attractive. In some major infrastructure projects in England and Wales, the developer has provided that resource and borne the expense on behalf of the community. That has happened in waste rather than in transport.’

94. The Committee put the above concerns to the Minister, when he appeared before the Committee. He was asked whether there was parity between objectors and promoters because much more significant resources were available to promoters than to objectors. The Minister responded—

‘That is a genuinely difficult question….obviously, if the Government is promoting a major rail or road project through Network Rail, Transport Scotland or a regional transport partnership, it can spend a lot to promote the relevant bill.

‘There are two important issues. First, front-loading the exercise to try to sort out issues is important—I am sorry to labour that point. Secondly, the potential for an inquiry independent of Government is important. No matter how much money Transport Scotland, for example, might have invested in a project, an inquiry must fully consider how properly the organisation had conducted itself in assessing a business case or part of a project. We can certainly give the committee more details about the process. It is important that the reporter be adequately resourced to do their job properly.’

95. While the Committee sympathises with the burden of work which objectors have to carry, nevertheless it is of the view that it would not be appropriate for public finances to be utilised to provide financial support for objectors to a particular project. The Committee has recommended above that as much information should be provided to those potentially affected by a project as possible, and the Committee further recommends that reasonable time is permitted to allow objectors to present their case. The Committee hopes that this will go some way towards striking a reasonable balance between promoters and objectors.

Triggering Inquiries

96. The Bill includes provisions for public inquiries to be held to examine objections to transport infrastructure projects. The Bill requires a public inquiry to be held where certain organisations and/or individuals maintain an objection to the proposed development. The Policy Memorandum states—

‘An inquiry or hearing will be held if it is requested by a local authority or national park authority within whose area the works are proposed to be
carried out and/or anyone subject to compulsory purchase for the
development. The Scottish Ministers may either afford other objectors an
opportunity to be heard through an inquiry or hearing, or may consider their
objection through written correspondence. The intention is to allow an
opportunity for a fair hearing to statutory objectors (those who will be
directly affected by an application) but also, subject to the Scottish Ministers
discretion, others who object to the application. 36

97. Several witnesses raised the issue of which statutory bodies and members of
the public should be able to require an inquiry or hearing.

98. The Bill proposes to give those people subject to compulsory purchase
orders the right to require an inquiry. Odell Milne, an objector to Edinburgh Tram
Line (One) Bill felt that ‘frontagers’ (individuals who own land fronting onto
proposed transport development sites) should also be included in this procedure—

‘The bill as drafted will not give frontagers—which is what we all were—the
right to be heard in an inquiry. I understand that that is the position in
England, as well. However, frontagers generally are heard, and it should be
enshrined in legislation that they have a right to be heard. Often, frontagers
are worse affected than people from whom land is to be taken. If you are
taking land from a big estate, the person might not be very badly affected and
will get compensation. By everybody’s admission, the compensation for
frontagers is pretty poor, yet they are the people who are genuinely badly
affected by such projects.’ 37

99. Richard Evans from RSPB Scotland also stated that there should be an
extension to the list of those organisations and individuals which can require an
inquiry or hearing to be held—

‘If a proposed project would cause a large enough amount of damage on a
site that was in the sphere of interest of the Scottish Environment Protection
Agency or SNH—a European wildlife site would be in SNH’s sphere of
interest, for example—and proposals to minimise and compensate for the
damage as part of the scheme had not been agreed, the sustained objection
of SEPA or SNH should trigger a local inquiry.’ 38

100. John Thomson from SNH, however, in oral evidence to the Committee did
not raise the issue of extending the list of organisations with a right to require an
inquiry or hearing to be held to include SNH. John Thomson stated that he
envisioned under the Bill a greater role for SNH in the whole application process—

‘We are dissatisfied with the private bill procedures, our main complaint being
that they do not provide for the early enough engagement of statutory
consultees such as Scottish Natural Heritage. As a result, we could end up
formally objecting to measures that we support in principle, merely to ensure
that the environmental issues are adequately addressed. That is an

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36 Policy Memorandum 121
37 Col 4001
38 Col 3976
unsatisfactory situation. The bill should overcome that objection and enable the procedure to be integrated with other statutory regimes and requirements.

101. The Committee asked the Minister for Transport why the Bill did not propose that all nationally significant transport proposals should automatically trigger a public inquiry, given that they were all likely to attract at least one objector. The Minister for Transport responded—

‘That is a judgment call—ministers of the day would have to make an assessment based on the circumstances. We have achieved the right balance in leaving the potential for a minister simply to move a project forward […] That is probably the right judgment call in those circumstances.

[…] It is difficult to imagine a major project—particularly, dare I say it, a road project—to which no objection would be raised. Last week, there were objections from curious quarters to a rail project. However, I think that we have achieved the right balance. We have left some flexibility in the system. We must also remember that we all want projects to progress more quickly. I suppose that a minister might come under slightly curious attack for putting in place an unnecessary process, but we have made a judgment call and have suggested that approach to Parliament.

102. Following the oral evidence which the Committee received regarding extending the list of those with the right to require an inquiry or hearing to be held, the Minister for Transport stated his intention to amend the Bill at Stage 2—

‘As you are aware, the bill gives local authorities, national park authorities and those who are affected by compulsory purchase a right for their objections to be heard at an inquiry. I have followed the discussions of this committee and the evidence of witnesses and I am pleased to advise that I shall lodge an amendment at stage 2 to extend that right to be heard at an inquiry to navigation authorities, Network Rail and regional transport partnerships. I hope that that will address some of the concerns that have been expressed.’

103. The Committee recognises the importance of the correct balance being struck between enabling those with a vested interest in a proposed transport infrastructure project the opportunity for their views to be heard through an inquiry and the importance of a transport project being able to proceed in a timely manner.

104. The Committee heard from a range of witnesses who argued that the right to require an inquiry should be extend to include other organisations. The Committee therefore welcomes the Minister for Transport's commitment to extend the right to call an inquiry or hearing to navigation authorities, Network Rail and regional transport partnerships.

39 Col 3975
40 Col 4056
41 Col 4049
ABOLITION OF PRIVATE BILLS COMMITTEES

105. The Bill removes the need for Private Bill committees to be established to approve transport related proposals. The Policy Memorandum explains that this provision had its origins in a recommendation made by the Procedures Committee in its 4th Report, 2005. Private Legislation, which was debated, and supported, by the Parliament. The Policy Memorandum states—

‘The Scottish Parliament had clearly stated its will in May 2005 not to proceed with a Private Bill process, therefore any proposal that seeks to retain (or indeed extend) the current level of Parliamentary engagement is likely to be met unfavourably by all parties (Parliamentarians, promoters and those affected by developments).’

106. The proposal to remove the need for Private Bill Committees was supported by the two former Conveners who gave evidence to the Committee. The former Conveners cited the significant workload and the complexity of the information which committee members had to understand, as being onerous. Tricia Marwick MSP, former Convener of the Waverley Railway (Scotland) Bill Committee told the Committee—

‘The Waverley Railway (Scotland) Bill Committee met for almost three parliamentary years to consider the private bill, which made it one of the longest running private bill committees. There were problems with the private bill—not least with the rushed way in which the promoter introduced it. The bill was not ready to be in the Parliament. We also had problems with land referencing and objectors, which delayed the bill for a further six months. The task was extremely onerous. When we took evidence, we met most Mondays during the period.’

107. Tricia Marwick MSP offered general support for the proposal in the Bill to remove the need for Private Bill Committees—

‘The proposed new process will be a lot cleaner and will cut down MSPs' involvement. If I can speak as the former Scottish National Party business manager, I know the difficulty that my party has had in proposing members for future private bill committees as a result of the experiences that some members had on previous private bill committees. It goes without saying that I am in favour of a streamlined system.’

108. Jackie Baillie MSP, former Convener of the Edinburgh Tram (Line One) Bill Committee backed this position—

‘The new bill is absolutely right in removing the biggest chunk of time, which is the consideration stage of the private bill process. The Edinburgh Tram (Line One) Bill Committee had about 150 objections from articulate individuals, all of which had to be considered, individually and collectively.

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42 Policy memorandum para 68
43 Col 3900
44 Col 3901
Those 150 objections took in excess of 100 hours of parliamentary scrutiny.'

109. Jackie Baillie MSP explained that members of the Edinburgh Tram (Line One) Bill Committee had to master complex detail associated with the Edinburgh tram project and she doubted whether MSPs were best qualified to carry out this task—

‘I now consider myself an expert on patronage, demand modelling, water-flow issues and the difference between $L_{A_{\text{max}}}$ and $L_{A_{\text{eq}}}$ in describing noise, but that is not the kind of knowledge that MSPs bring with them to the Parliament. A huge degree of complexity is involved in private bills and I am not convinced that MSPs are best placed to work their way through that.’

110. As well as the potential burden of MSPs being required to analyse complex and technical details of a project, some witnesses also noted the negative impact of parliamentary timetabling. Douglas Muir, transportation policy manager at Midlothian Council, who worked on the Waverley Railway project, highlighted both these problems—

‘Our approach was dictated by parliamentary timescales, which include summer recesses and so on. That made it difficult for the promoter to plan its workload and to keep moving forward, and it made things difficult for the objectors. We spent a considerable amount of time bringing MSPs up to speed on technical issues that a technical person might have been able to deal with more quickly. That is no criticism of MSPs—I would be in the same position if something that I did not know or understand were thrown at me. Much time was spent on covering background; I hope that the proposed new process will speed that up.’

111. This view was echoed by other witnesses. Susan Clark of TIE Ltd talked about the ‘stop-start aspect to the process because of parliamentary recesses’.

112. The Committee took evidence from a panel of objectors to Private Bills to obtain their perspective of the efficacy of Private Bills Committees. Whilst it is not necessarily the case that their views are representative of objectors more generally, the witnesses did express a clear view that MSPs sitting on Private Bill Committees were not best placed to consider the technical issues involved in transport projects and to deal with the concerns of objectors. Kristina Woolnough, an objector to the Edinburgh Tram (Line One) Bill, explained, for example, that—

‘It was hard going for everyone because the subject was technical and there was a lot of information. Perhaps the experts enjoyed talking endlessly about trams, noise, sound and vibration, but I do not think that anybody else did. As Alison Bourne said, we had hoped that the MSPs would listen to the people and be robust in getting answers to our questions, but that did not happen. Our questions are still unanswered.'
The key point is that we feel that the process was party political. The delivery of the tram project in Edinburgh had the support of all the parties at council level, which was pretty much reflected in front of the committee. We felt that it was a done deal because it was a politically motivated project that already had party-political endorsement.  

113. Kristina Woolnough also told the Committee that—

‘The key argument that we can make is that, whatever process is devised for MSPs and for reporters, the public must be meaningfully involved. That requires that whatever input they make will have a clear outcome. People might not have their way, but there must be acknowledgement of their input.’

114. The Minister for Transport summarised the position of the Executive when he explained to the Committee that—

‘At the moment, we put an inordinate amount of pressure on colleagues of all parties who are members of private bill committees. We need to strike the right balance between preserving Parliament's absolutely appropriate right to scrutinise the Government's transport project intentions and providing a much more effective mechanism for dealing with them.’

115. The Financial Memorandum accompanying the Bill estimated the total number of ‘MSP hours’ spent on an average Private Bill—

‘Based on the experience of 3 transport Private Bills, we expect the average number of “recordable” MSP hours saved to be about 280 hours per Private Bill. This excludes any background work conducted by MSPs sitting on a Private Bill Committee.’

116. The Committee notes that the replacement of Private Bill Committees was a key feature of the Procedures Committee’s 4th Report, Private Legislation, which was unanimously supported by the Parliament in a debate in May 2005. There is a widespread acceptance of the benefits to be gained from the abolition of Private Bill Committees. MSPs who have served on previous Private Bill Committees have worked hard to understand the technical issues involved, but it is clear that elected politicians are not intrinsically well qualified to carry out such work. The Committee believes that Parliamentary involvement in the approval of transport related projects should take place later in the process and this will be discussed later in this report. The Committee therefore supports the proposal to end the use of Private Bill Committees.

48 Col 3995
49 Col 3998
50 Col 4051
51 Explanatory notes, para 126
EXAMINATION OF OBJECTIONS BY REPORTER

117. The Policy Memorandum explains that objections to transport related projects will be examined by a reporter—

‘It is proposed that the process used to examine objections will be consistent with other Scottish Executive policies; the Scottish Ministers will therefore call for an examination to consider objections. This will be chaired by an Executive-appointed independent reporter. The examination will be held in public, and the process will itself be open and transparent.’\textsuperscript{52}

118. This proposal attracted general support. John Halliday of SPT, for example, argued that the appointment of a reporter might streamline some of the bureaucracy previously associated with Private Bill Committees—

‘Our view is that the involvement of an expert inquirer will make the process much more dynamic in the sense that there will not be a need to go through as much of a paper trail as we need to go through at the moment. I do not think that that diminishes the validity of the argument. I have had experience of building up a case in the private bill process and can assure you that that generates an enormous amount of paperwork. A staggering amount of evidence is fed in.’\textsuperscript{53}

119. Douglas Muir of Midlothian Council told the Committee that he felt the examination of objections by a reporter might lead to a more informal atmosphere than that at a Private Bill Committee—

‘We dealt both with objectors and supporters of the Waverley project, quite a few of whom were put off by the formal parliamentary process. A more relaxed environment involving a reporter might suit such people a bit better. They might open up more, which would produce a better debate. We also had a problem in that we did not have the opportunity to cross-examine objectors when they said something that was obviously wrong. In a reporter’s inquiry, we can tease out exactly what objectors mean or question the line that they have taken. We were able to do that only in written evidence that was submitted to Parliament after the event, which made it difficult to follow a line of conversation.’\textsuperscript{54}

120. This view was supported by Susan Clark of TIE Ltd who offered her own view that—

‘The setting is probably a bit more informal. It is fairly intimidating for a member of the public to come and sit in front of you ladies and gents at the best of times. People who are objecting to a bill might never before have been involved in such a process. Taking things offline with the reporter might

\textsuperscript{52} Policy memorandum, para 54
\textsuperscript{53} Col 3916
\textsuperscript{54} Col 3940
make the process more informal. It is part of the philosophy behind the bill to make people feel a bit more comfortable.\footnote{Col 3958}

121. Odell Milne, an objector to the Edinburgh Tram (Line One) Bill, pointed to another potential advantage of using reporters to examine objections—

‘People have work commitments and cannot attend all the hearings. If it all took place in a week and one was committed enough, one could take a week's holiday, go to the reporter and make one’s points. There are attractions in the idea of there being a reporter, provided that people are given adequate time to prepare.’\footnote{Col 4001}

122. James McCulloch, Chief Reporter, Scottish Executive Inquiry Reporters Unit, was questioned by the Committee as to whether or not the process used by reporters would be less adversarial than that adopted at Private Bills Committee. He told the Committee—

‘We want to ensure that the process that we use in the examination of objections best fits the nature of the issues that are raised. For example, when a particularly technical issue that requires deep probing is involved, it could be subject to an adversarial process, but when opinion is involved—for example when local residents want to make their views known and have strongly held opinions about a development and its impact on them—I and other people in the inquiry reporters unit would not see that as appropriate for adversarial examination.’\footnote{Col 4039}

123. The Committee supports the principle of the use of a Scottish Executive appointed Reporter to examine objections to transport related projects. The Committee notes the comments of some witnesses that a reporter-based system will allow objectors to participate in a less adversarial environment than a Private Bill Committee. It remains to be seen whether this will be the case, but the Committee nevertheless welcomes the commitment of the Chief Reporter to aim to create such an environment.

\textit{Resources available to the Scottish Executive Inquiry Reporters Unit}

124. The Committee considers that the resourcing of Scottish Executive Inquiry Reporters Unit (SEIRU) will be an important factor in determining how well the new process works. Alex Macaulay of SESTRAN explained to the Committee that—

‘That is a straightforward resource issue. The reporters unit is of a finite size, just as the Parliament is, so it has a certain capacity for dealing with inquiries, although that capacity is variable, as the unit can call in temporary reporters to enhance the resources available.’\footnote{Col 3966}

125. The Committee questioned the Chief Reporter as to whether employees of SEIRU would have the specialist and technical knowledge to report on potentially complex transport developments. Mr McCulloch told the Committee—
‘The reporters do not have an encyclopaedic knowledge. They have to understand exactly why a particular party holds a certain view. They would probe and ask questions or, if the matter were being dealt with adversarially, perhaps rely on someone else to ask the questions and then come in afterwards to ask the questions that had not been asked and still needed to be covered.’

126. The Committee also questioned Mr McCulloch on what budget would be available to SEIRU—

‘The policy memorandum suggests that the costs of the unit’s involvement in processing transport and works act inquiries will be recovered from the promoter. As far as my unit’s budget is concerned, the legislation should be cost neutral in any year, because we would simply take the resources back in.

On the work that might be involved, the conclusion that has been reached is that we would simply be replacing processes like for like. For example, we have been involved in the Kincardine bridge, the M74 and various other major road proposals, such as the Glasgow southern orbital route. We will still be involved in the future, but under a different statutory process.’

127. The Minister for Transport explained in evidence to the Committee that —

‘The plan is to bring in appropriate expertise. That has been built into SEIRU’s operating business plan. The situation is equivalent to the way in which we developed expertise in Transport Scotland, for example, by bringing in highly able men and women to scale up the organisation to cope with the commercial pressures for which the organisation has responsibility and to deliver an extensive programme of transport improvements.’

128. The Policy Memorandum states that the costs of an examination to SEIRU are ‘likely to be recovered from the promoter.’ The Committee recommends that the Minister provides clarity on whether this will in fact be the case. The Policy Memorandum also makes reference to the implications of the new arrangements for SEIRU’s business planning and the Committee also notes the Minister’s comments about SEIRU being resourced with appropriate expertise. The Committee recommends that SEIRU is adequately resourced to ensure no delays take place in the consideration of objections which could be attributed to a lack of resources.

Status of report made by reporters

129. The Policy Memorandum states that—

‘The Scottish Ministers must make public their decision and their reasons for it together with a notice containing a description of the main measures to be
taken to avoid, reduce and, if possible, remedy major adverse environmental effects.'

130. Ewan MacLeod of Shepherd and Wedderburn on behalf of Shetland Islands Council stated—

‘As far as openness is concerned, when a reporter is appointed there will be a public inquiry at which anyone with anything relevant to say will be entitled to appear or to be represented. The reporter will have to take into account any relevant representations. I accept what you say about the report of the inquiry not being published until after the minister has made his decision, but the report and the minister's decision will ultimately become public.

131. The Committee recommends that reports made by reporters should be made public after the Minister has had a reasonable time, not more than two months, to consider them.

TIME SAVINGS

132. The Policy Memorandum states that the new process to authorise transport-related developments 'seeks to be cost and time efficient'. It goes on to say that—

‘The authorisation process from application to the making of an order should not take longer than the existing Private Bill process and indeed there is every expectation that the time frame will be shorter since much more activity is to occur prior to the application.’

133. The Committee took evidence on the likely time efficiency of the new process. The Committee received different views on whether the new process would allow transport projects to be approved more quickly when compared to Private Bill Committees.

134. A witness from Scottish Natural Heritage thought that time would be saved under the new arrangements, telling the Committee—

‘Although the bill might seem to add to the complexity and cumbersomeness of the procedures, we are convinced that in practice the new approach will speed up the approval of major projects, which by their nature are complex and raise a range of environmental issues. The new procedures should reduce conflict in the passage of measures and lead to better outcomes.’

135. However, Douglas Muir of Midlothian Council was less sure, commenting—

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63 Policy memorandum, para 63
64 Policy Memorandum, para 3
65 Ibid, para 60
66 Col 3975
‘I do not know whether a huge amount of time would be saved in the process. If the reporter is doing his job properly he will be taking evidence from all parties and weighing it up.’

136. John Halliday of SPT was also unsure as to whether the new procedure would speed up the approval process—

‘It is difficult to say yea or nay to that. From my reading of the Transport and Works Act 1992 and my understanding of the English system under it, I suggest that there is probably some efficiency to be gained and the formal stage of the order process should be quicker. That said, to be frank, if the scope of the work was not sufficient, that would suggest inefficiency on the part of the promoter and the cost of the middle part of the process could be just as high. In a sense, that is possibly the right way round, because the promoter carries the burden to develop the project.’

137. TIE Ltd did not offer a particularly optimistic assessment—

‘I have said that the current private bill process is lengthy and complex. We believe that an inquiry process is likely to generate much more paperwork and will focus on much more detail. There is a tension between the timescale for the private bill process and the expected timescale for the new process, but one proposal that will militate against the timescale being lengthened is the ability to appoint multiple reporters to deal with issues in parallel. That is to be welcomed.’

‘I do not feel that it will probably be longer. It could be as long, but the bill contains provisions to speed up the process.’

138. Some witnesses suggested that the speed at which projects would be approved might depend on the pre-application activity carried out by the promoter. Karen Gribben of Network Rail told the Committee, for example—

‘It is difficult to compare the time that each project takes, because they are all incredibly specific. A lot of it comes down to how well the promoter prepares in advance, which is a fundamental issue that the bill seeks to address in front-loading the work to ensure clarity and transparency, and to how many properties are affected.’

139. This view was also supported by James McCulloch, Chief Reporter, Scottish Executive Inquiry Reporters Unit—

‘We expect there to be better engagement with the community and—as was reinforced in some of the evidence I heard this afternoon—a reduction in the misunderstandings that can lead to objections being made, and then maintained throughout the process. The inquiry or examination stage at the
end of the process should therefore be shorter, which should make the process more straightforward and concentrate minds on the crunch issues that are in dispute between the statutory bodies, the community and the promoter. We hope that the inquiry stage will be shorter.\footnote{Col 4036}

140. The Minister for Transport suggested that the new procedures could lead to time savings—

‘There will be a bit of work to do on how best to manage the first project to go through the new procedure, but that is the essential core of making a more efficient process that delivers the time savings that we are seeking and provides a better process for the promoter and the Government in seeking to meet their transport objectives.’\footnote{Col 4050}

141. The Committee notes that ‘time efficiency’ in the new arrangements is an objective of the Minister, and the Committee welcomes this emphasis as a way of speeding up the delivery of transport projects in Scotland. As discussed above, the Committee received different views on whether the new process will actually lead to time savings. The Committee notes that achieving time savings may depend on the quality of the pre-application activity which promoters will be required to undertake and the degree to which this leads to a reduction in objections. If this pre-application activity is successful than the length of time from the application to the making of an order is likely to be shorter than the timescales under the current Private Bill arrangements.

**ROLE OF MINISTERS**

142. The Committee took evidence on the question of whether a Minister should be able to act as a promoter of a project (or offer financial support to another promoter) whilst also having the role of deciding whether to accept or reject a reporter’s recommendations on that project. The Policy Memorandum confirms—

‘The intention is that the Scottish Ministers will be able to act as a promoter and the rules in respect of engagement and the publicity of information will apply to them as they apply to any other promoter. Indeed throughout the whole process the Scottish Ministers when acting as a promoter will be expected to follow rules similar to those that apply to other promoters.’\footnote{Policy memorandum, para 46}

143. James McCulloch, Chief Reporter, Scottish Executive Inquiry Reporters Unit, told the Committee that currently fewer than 5 per cent of reporter’s recommendations to Ministers were overturned\footnote{Col 4037}.

144. Some witnesses expressed concern about this possible overturning of the reporter’s recommendations. Alison Bourne, an objector on the Edinburgh Tram (Line One) Bill, for example, told the Committee—
After a thorough and detailed assessment of the bill, a reporter may have reservations about it, but I am concerned that MSPs would be able to override the reporter... I can absolutely understand why MSPs want projects to be delivered, but I would have serious concerns if that were done at the expense of discounting what a technically qualified expert reporter had said.  

Douglas Muir of Midlothian Council also expressed concern—

The process leading up to the final stage is quite democratic—the public are involved in the consultation and can object, and I would hope that the reporter would deal with that in a fair manner. At the final stage, it would be a bit worrying if the reporter who had taken all of the evidence suggested that the scheme should go ahead but had his decision overruled by one person who has decided that it should not.

Other witnesses were less concerned. Ewan MacLeod of Shepherd and Wedderburn on behalf of Shetland Islands Council told the Committee—

If something has been missed, if there is a feeling that the minister has taken into account irrelevant considerations, or if the procedure has not been followed properly, there is the opportunity for recourse to the courts.

The Minister for Transport told the Committee—

I hope that the 5 per cent figure will come down because of the amount of work that will be done at the start of each project. We—or future ministers—might be able to reduce the number of cases in which ministers overturn the recommendations of a local inquiry. It is clear that there should be a right to a local inquiry, which will be an important part of the process.

The Minister indicated that the direction given to a reporter by Scottish Ministers would take account of the policy context of the proposal and whether the will of Parliament and the Executive is that the project should proceed—

Reporters will properly assess the detail of projects. If the Parliament endorses strategic documents or a planning framework that includes proposals for a significant new railway in Scotland, the reporter will be bound to take that into account—as they currently do. For example, if the
Government intends to build a road, the reporter who considers the project takes account of that intention. The reporter considers details such as whether the Government followed the correct procedure and whether environmental assessment was properly undertaken, as well as aspects of the project that independent objectors or statutory consultees have questioned. That is a fair assessment of the manner in which engagement will take place in the proposed new system.\textsuperscript{81}

150. The Committee is of the view that it is appropriate that, in the last resort, the Minister should have the right to overturn a recommendation of a reporter. In such circumstances the Committee recommends that the Minister should make a written statement, with reasons for his/her decision, to the relevant Committee. It would be open to the Committee to invite the Minister to a meeting of the Committee to explain his/her decision.

151. The Committee invites the Procedures Committee to consider the most appropriate way of giving effect to the above recommendation.

ROLE OF THE SCOTTISH PARLIAMENT

Report of the Procedures Committee

152. The Procedures Committee was designated a secondary committee on the Transport and Works (Scotland) Bill. The Procedures Committee has a particular interest in the Bill, as the Bill was developed by the Executive following its acceptance of a recommendation by the Procedures Committee in its 4th Report, 2005, \textit{Private Legislation}.

153. The Procedures Committee’s report to the Local Government and Transport Committee can be found at Annexe A. In its report, the Procedures Committee supported the general objectives of the Bill—

‘We argued in 2004, and continue to believe now, that a statutory system for authorising transport projects by Executive order is a major step forward from the current Rule-based system for authorising such projects by Private Bill. In particular, it will bring the system for authorising rail projects broadly into line with the existing system that applies to major road projects, thus removing from MSPs a substantial burden of work for which they are not particularly well-qualified and transferring it instead to a system of detailed scrutiny by independent inspectors and decision-making primarily by Ministers. This has the potential to greatly increase the overall clarity and efficiency of the process, to the benefit both of promoters and objectors.’\textsuperscript{82}

154. The report does, however, raise various doubts about the level of formal Parliamentary oversight of the process, which are discussed below.

\textit{Parliamentary scrutiny of orders}

155. The Procedures Committee report largely focuses on the question of the parliamentary scrutiny which would be given to orders made under section 1 of the

\textsuperscript{81} Col 4054
\textsuperscript{82} Procedures Committee report to the Local Government and Transport Committee, para 12
Bill. The Procedures Committee expresses concern that in developing a model based on the 1992 Transport and Works Act, the Bill substantially alters the balance it had wished to strike in its 2005 report between Parliamentary and Executive approval of projects. The Procedures Committee argues that the Bill removes many of the Parliamentary checks and balances it had envisaged being included.

156. The Bill provides that an order made under section 1 would only be subject to Parliamentary approval if it authorises “the carrying out of work which would constitute a national development” – which means that it features as such in the National Planning Framework (NPF) – or, otherwise, if Ministers so direct (section 13(1)).

157. This position is also explained in the Policy Memorandum—

‘The proposed process, which will be provided for largely in secondary legislation, distinguishes between those developments that are nationally significant and those which are not. The policy intention is that the Scottish Parliament’s interest should be proportionate and focus on those developments that are of national strategic interest.

In process terms nationally significant developments will be subject to express Parliamentary scrutiny and approval whereas non-national developments will be approved without reference to the Scottish Parliament…

It will be possible for the Scottish Ministers to subject, if they so wish, any order to affirmative procedures and they may wish, for example, to subject a novel guided transport system to affirmative procedure for reasons of public interest, even if the development itself is not of national significance.’

158. The Procedures Committee makes two comments on this. First, in the view of the Committee this gives Ministers a significant degree of discretion over whether Parliamentary approval is required, given that Ministers have the major role in determining what is included in the NPF in the first place. Second, the Procedures Committee notes that it means that projects of regional or local significance are not subject to any formal Parliamentary approval at all.

159. In its report, the Procedures Committee argues that all section 1 orders should be subject to some form of Parliamentary control – albeit only negative procedure in most cases. The Procedures Committee does accept that a distinction can be drawn between projects that are “nationally significant” and those that are not. The Procedures Committee therefore argues—

‘So long as all section 1 orders were subject to some form of Parliamentary control, we would be content for “national significance” to be the criterion for deciding the nature of that control (i.e. whether it is negative or affirmative procedure)”

83 Policy memorandum, paras 36, 37 and 39
84 Procedures Committee report, para 28
The Procedures Committee notes the powers in the Bill that give Ministers the ability to include projects that do not qualify as nationally significant among those that are subject to Parliamentary approval. The Procedures Committee argues that if such flexibility is needed, it should be exercisable by the Parliament as well by Ministers. The Procedures Committee summarises its position as follows—

'We believe that all section 1 orders must be subject to some form of Parliamentary control. The Parliament or the relevant committee may quickly decide that a particular order is straightforward and does not require detailed scrutiny, but the opportunity for scrutiny must be there. And if there is to be a hierarchy of projects, with those perceived to be less important receiving less scrutiny, this hierarchy should not be decided only by Ministers. Either the criteria should be set out objectively in the Bill, or the Parliament should have the same right as Ministers to decide which projects are more important.'

The Minister for Transport told this Committee that he did not back a position in which all section 1 orders should be subject to Parliamentary control—

'Given the front-loading exercise and the significant top-line parliamentary scrutiny in the context of the national transport strategy, the strategic projects review and the planning framework, for example, as well as the run-of-the-mill member’s debates, parliamentary questions, and general debates, it will simply not be necessary to have yet another process.'

The Minister made similar comments when he appeared before the Procedures Committee. This position was referred to in the report of the Procedures Committee which responded—

'We do not believe that the general scrutiny opportunities referred to by the Minister are an adequate substitute. The Planning etc. (Scotland) Bill does not guarantee sufficient scrutiny of the National Planning Framework to ensure that each particular proposal is examined and debated in adequate detail. Similarly, neither debates on the national transport strategy and the strategic projects review, nor individual members’ use of PQs, is likely to reveal sufficient information about particular road or rail projects to enable the Parliament to make a properly informed decision.'

The Policy Memorandum highlighted in more detail the Executive’s thinking on this issue and the reasons why Ministers do not support greater parliamentary involvement in the approval process—

'One of the key aims behind the new process is to ensure that consideration and authorisation of a transport proposal can take place as expeditiously as possible. That has been one of the main criticisms of the Private Bills process by respondents to the consultation. However, by introducing more levels of authorisation, there is a risk of prolonging the authorisation process, because before any kind of authorisation can take place, a proper consideration of the

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85 Ibid, para 30
86 Col 4053
issues is required in order to make a valid judgement. A full exposition of the issues will be undertaken at the examination. If the Scottish Parliament or another form of scrutiny takes place prior or subsequent to the independent public examination by a reporter, further examination of the issues, by the Scottish Parliament or the third party, will be required. We do not believe this would be conducive to operating an efficient process.'

164. The Committee notes that projects which are not to be subject to Parliamentary approval will nevertheless have been the subject of various processes of scrutiny at different levels. The Committee is not persuaded that there is an additional need for Parliamentary scrutiny, within the provisions of this Bill, of those projects which are not of national significance.

Report of the Finance Committee

165. The question of the scrutiny by the Parliament of section 1 orders was also raised in the report by the Finance Committee. The Finance Committee sees a role for itself within the new approval arrangements. In its conclusion to its report to this Committee, the Finance Committee states that it—

‘Remains concerned that there is no formal mechanism in the bill for Parliament to scrutinise any changes in the capital costs of projects after the authorisation process has taken place and that a more regular and robust method of authorisation and reporting should be introduced... The Committee recommends that the Finance Committee should have a scrutiny role in the authorisation process; that the IIP [The Executive’s Infrastructure Investment Plan] should be updated regularly and scrutinised by the Finance Committee and relevant subject committees on a regular basis; and a process should be put in place so that when it is known that project costs will significantly overrun, the revised costs should be reported to Parliament (through the Finance Committee and relevant subject committee) at that time.’

166. The Finance Committee report went on to say that it—

‘Will consider, together with the Minister for Finance and Public Service Reform, how these recommendations might be taken forward. In addition the Committee recommends that the lead Committee raise these issues with the Minister.’

167. The Local Government and Transport Committee notes the report of the Finance Committee. The Committee would be content for the Finance Committee to take forward its recommendations via discussions with the Minister for Finance and Public Service Reform. The Committee notes that many of the recommendations of the Finance Committee could be taken forward via good practice and protocols between the Parliament and the Executive rather than on the face of this Bill.

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87 Policy Memorandum, para 145
88 Finance Committee report to the Local Government and Transport Committee, para 32
OTHER ISSUES

Definition of “national significance”

168. The Committee noted some confusion amongst witnesses about what, in practice, would constitute a nationally significant development. The Policy Memorandum states that—

‘A nationally significant development will be described and defined within the National Planning Framework (NPF), and the Scottish Parliament, as part of its review of the NPF, will have an opportunity to debate the merits and principle of the development at an early stage. The intention is that all nationally significant transport developments should be subject to the express approval of the Scottish Parliament, therefore the orders will be subject to affirmative procedures.’

169. Susan Clark of TIE Ltd told the Committee, however, that—

‘The devil will be in the detail and in the criteria for nationally significant projects. EARL was a project that linked Scotland into Edinburgh airport and crossed local authority boundaries, so I think that it would fit the criteria for a nationally significant project, and although the tram scheme is contained within the Edinburgh area, its cost could trigger a requirement for it to be dealt with as a nationally significant project. What is required is a definition of the criteria for a nationally significant project.’

170. John Halliday of SPT cited one example which he suggested illustrated the problem of how to define a nationally significant development—

‘The question is a difficult one. National significance will be defined in the national planning framework, which is in a sense a snapshot in time. I will give one example to illustrate why the proposal may lead to problems.

SPT is currently working up the proposals for the Glasgow crossrail project, which has been under consideration for some time. The project has been debated in the Scottish Parliament—indeed, it was the subject of an order under the previous system at Westminster. Crossrail is not in the national planning framework or—as yet—in the developing rail strategy. However, the west of Scotland contains 42 per cent of Scotland’s population and people there, who are familiar with the project, almost unanimously regard it as being of national significance, although it might appear to be a local project.’

171. Some witnesses cited the cost of a project as being one factor which could determine whether or not it was nationally significant. Douglas Muir of Midlothian Council told the Committee—

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89 Policy Memorandum, para 38
90 Col 3953
91 Col 3921
‘The other thing that might dictate what happens, to a degree, is finance. The scale of projects might lead to differences.’

172. John Halliday of SPT, however, thought that the cost of a project should not be the only indicator of national significance—

‘I would be cautious about making economic impact the only criterion. My experience in public transport is that it is almost always difficult to find public transport projects that have huge cost-benefit ratios and net present values. That is not to say that the projects are not worth delivering; it is simply a feature of the science of economic evaluation, which cannot capture all the benefits of a project.’

173. Alex Macaulay of SESTRAN offered a possible definition of a nationally significant project—

‘In my view, we need to relate it to the development of the top-down policy approach. National transport policy should define the types of projects that are of national transport significance. Those are schemes that give international connectivity, connectivity between the major cities and centres of population in Scotland and connectivity across the border, and schemes that support developments that the national planning framework defines as being of national strategic significance—major land-use changes and so on.’

174. The Minister for Transport addressed this apparent confusion when he spoke to the Committee—

‘As you are aware, the bill distinguishes between local and nationally significant projects. I understand that there has been some confusion about the distinction between those terms. However, the definition of nationally significant projects will become clear during stage 2 of the Planning etc (Scotland) Bill and as a result of the consideration of the national planning framework. It might be helpful if I say that transport projects that are currently being taken through the capital programme, such as the M80 project and the Edinburgh airport rail link, would be examples of nationally-significant projects.’

175. The Committee notes the Minister’s comments regarding the definition of a nationally significant development and that he gave the M80 project and the Edinburgh Airport Rail Link as examples. The Committee considers that in order to understand the practical impact of the Bill, this definition will be of some importance. The Committee notes that national developments will be identified within the National Planning Framework. However, the Committee notes that what would be considered to be a “national development” is not specifically defined within the current Planning etc. (Scotland) Bill.
176. **The Committee considers that further examples of what in practice would, or would not, constitute a “national development” would assist its understanding of the Bill. The Committee recommends that the Minister provides further examples, in addition to the ones highlighted above, to aid its understanding of this issue and to address the confusion on this subject that currently seems to exist.**

**Access to land**

177. Section 18 of the Bill would permit the Scottish Ministers to set up a regime to authorise prospective applicants to access land for the purpose of informing an application for an order.

178. This provision was supported by CBI Scotland, who said in their written evidence that—

‘This ought to minimise the area affected by the affected route, and help to clarify the number of groups and individuals affected by the proposed development.’

179. TIE Ltd also welcomed the policy, saying, in its written evidence, that—

‘A Promoter who cannot secure the agreement of landowners can be forced to include land within limits of deviation purely because the suitability of the land cannot be ascertained.’

180. Susan Clark of TIE Ltd also said in oral evidence that—

‘One reason in addition to environmental reasons why promoters like to access land in advance is to understand some of the risks associated with a project.’

181. Bruce Rutherford of Scottish Borders Council, who is the Waverley Railway project director, pointed out in oral evidence that—

‘Under the private bill process, we have no powers of land entry at an early stage in a project, so we are delighted that such powers will be included in the new order-making system. It is important to ensure that promoters have statutory powers of early land entry. When they are working up the details of proposals, they may want to speak to landowners about ownership, to carry out topographical surveys or to do preliminary geotechnical work: they need the power of entry to do that.’

182. SESTRAN, in its oral evidence, also supported the proposals for powers to access land in advance of an order being confirmed.

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96 Written evidence CBI Scotland
97 Written evidence TIE
98 OR Col 3952
99 OR Col 3941
100 OR Col 3961
183. Network Rail, in oral evidence, added a reservation. While it supported the proposals in principle, it said that—

‘However, in the interests of safety and to ensure the operational reliability of the railway, it is unacceptable for Network Rail, as the statutory undertaker, to allow anyone to access an operational railway without our permission. It is essential that only people who are properly safety qualified can access an operational railway and that such access is made at a time and in a manner that does not introduce risk to the operation of the railway or to personnel.’

184. The Minister confirmed in his oral evidence that—

‘…the arrangements would take into account, for example, health and safety considerations and timing of access, given the timing of railway maintenance.’

185. The Committee notes the broad support for the proposals to enable access to land as set out in section 18 of the Bill and, on the basis of the assurance given by the Minister that appropriate health and safety considerations will be taken into account, endorses the proposals.

Voluntary purchase schemes

186. Section 26 of the Bill would enable—

‘Scottish Ministers to provide funds to a third party that may be used subsequently to fund and operate a voluntary purchase scheme’

187. This would apply to—

‘properties which, whilst not eligible for purchase under compulsory purchase arrangements, may be affected by the construction and operation of a transport development.’

188. Network Rail, in its written evidence, while accepting that the provisions of section 26 themselves were understood and, because they were discretionary, did not give rise to any concerns, nevertheless said that—

‘Any suggestion that a VPS is a pre-requisite of a scheme authorised by the new Bill procedure is unacceptable so far as Network Rail is concerned, as we believe that the principle of VPS is very complex, and requires a case by case evaluation for each project.’

189. Further elaboration was provided by Network Rail in its oral evidence—

‘We do not think that a one-size-fits-all approach works in the context of major rail projects, with an initial premise that it will automatically be possible
to confirm everyone who is affected. The interaction between the project and the people involved in it must be considered. Some of the issues do not come out until the detailed design stage, particularly when it comes to the voluntary purchase element. It is possible to tell which properties are directly affected by the project—certain things cannot be moved from in the overall outline design. In the VPS situation, mitigation measures will often be taken. It is a matter of working with the affected home owners or businesses to find measures to mitigate the situation. If it is not possible to find such measures, it then becomes a matter of acquisition, which involves going through a process of iteration to calculate and assess the monetary considerations.

‘That is what we were trying to get at. It is very oblique in the letter, unfortunately, but we are saying that it is not possible to assume automatically that, when you submit your statement of expenses, you will have a cast-iron view on where the VPS elements will go. It is a process of iteration, working with the affected home owners.’

190. Network Rail, in its oral evidence, went on to agree with members that, given that such purchases were intended to be voluntary, there did not appear to be a need for them to be provided for in legislation. 106

191. The Minister, in his oral evidence, explained that—

‘During the passage of the Waverley Railway (Scotland) Bill, it was discovered that funds that Government provides to promoters for transport developments cannot be used to operate a voluntary purchase scheme. The bill will rectify that anomaly. We simply do not have the power, so we propose to create it.’ 107

192. Damian Sharp of Transport Scotland, went on to explain that use of the mechanism would be limited. He said—

‘Transport Scotland has published a policy in relation to the circumstances that we would expect to apply to schemes that it funded. We have made it clear that there is an initial presumption against use of a voluntary purchase scheme, and that there needs to be proof of the need for one. The policy gives examples of the types of situation in which it would be appropriate for such a scheme to be used.’ 108

193. In the light of the explanations given by the Minister and by Transport Scotland, the Committee endorses the proposals for enabling voluntary purchase schemes as set out in the Bill.

Ports and harbours and Special Parliamentary Procedure

194. The existing system for the approval of certain road and harbour projects and of navigation orders is set out in paragraphs 44-53 above, together with an explanation of how the system proposed in the Bill would work.
195. The RSPB, in its written evidence, proposed that to protect wildlife the EU Habitats Directive should apply to orders made under the Bill and to orders made under the Harbours Act 1964. Richard Evans, of the RSPB, in oral evidence, said that the Bill provided an opportunity to address this issue. The Committee did not take evidence from ports or harbour authorities on this point.

196. The Committee notes the proposal which was made in evidence that the EU Habitats Directive should apply to orders made under the Bill and to orders made under the Harbours Act 1964. The Committee seeks the view of the Scottish Executive on this proposal.

197. The Shetland Islands Council referred to the existing Special Parliamentary Procedure (SPP) under the Roads (Scotland) Act 1984, in cases where a roads authority proposes to build a bridge over or a tunnel under navigable water which is likely to restrict or impede its operations or interfere with reasonable requirements of navigation, and a navigation authority objects to the proposal. In its written evidence, the Council agreed that the Bill’s proposal to replace SPP with an order making procedure—

‘... is an entirely appropriate course of action.’

198. In oral evidence on behalf of the Shetland Islands Council, Ewan Macleod spoke of the—

‘paralysis of process’

which the SPP entailed.

199. The British Ports Association, however, in its written evidence, said that—

‘The proposals discussed in the consultation document are largely based upon the English Transport and Works Act (TWA) system. The port industry’s experience of that system in England and Wales has not been by any means an unqualified success. The shortcomings of that system prompted the drafting of a Harbours Bill, currently before the House of Commons. A similar bill entered Scottish Law as a part of the Transport (Scotland) Act 2005. Our members are, therefore, wary of proposals to create a TWA style procedure.’

200. The written evidence of the Lerwick Port Authority was more direct—

‘In our view, abolition of SPP is a retrograde step. The existing system, SPP, insofar as relating to ports and harbours, only applies in restricted areas and provides an effective tried and tested balance between the Parliament,

\[\text{Written evidence RSPB}\]
\[\text{OR Col 3980-81}\]
\[\text{Written evidence Shepherd and Wedderburn on behalf of the Shetland Islands Council}\]
\[\text{OR Col 3926}\]
\[\text{Written evidence British Ports Association}\]
Ministers and the Civil Service/The Scottish Executive and a like fair balance especially where the competing interests of public bodies are involved.114

201. Linda Knarston, giving oral evidence on behalf of the authority, said that—

‘…the existing special parliamentary procedure should be retained…’115

She said that—

‘It might seem strange to say it, but one of the great successes of SPP is not that it is so limited in scope, or that it is particularly important in focused situations but that, in the past 61 years, there has been no SPP application in relation to harbours. …

‘It is difficult and daunting to prepare bills for Parliament. Large amounts of preparation and detail are required, which is perhaps why parties in such cases do what they ought to do and find ways to resolve differences without involving other people, whether those people be members of the Scottish Parliament or a reporter or the Scottish ministers.’116

202. Linda Knarston said that the affirmative statutory instrument procedure—

‘…that is envisaged under section 13 is not really parliamentary scrutiny. It would be rude to describe it as a joke but, if an issue is brought before the Scottish Parliament, either because it is of national importance or because the minister feels that it is an appropriate issue to bring to Parliament, all that Parliament is able say about the proposal, using the affirmative procedure, is yea or nay. It cannot amend the proposal; it would not be scrutinising it at all.117

203. The Minister was not questioned specifically on these arguments during his oral evidence, but, in his opening statement he said that—

‘As you are aware, the bill gives local authorities, national park authorities and those who are affected by compulsory purchase a right for their objections to be heard at an inquiry. I have followed the discussions of this committee and the evidence of witnesses and I am pleased to advise that I shall lodge an amendment at stage 2 to extend that right to be heard at an inquiry to navigation authorities, Network Rail and regional transport partnerships. I hope that that will address some of the concerns that have been expressed.’118

204. The Committee endorses the proposal to replace Special Parliamentary Procedures by order making procedures. While noting the arguments given in evidence by the Lerwick Port Authority that the existing procedure should be retained, the Committee acknowledges that the inclusion of navigation

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114 Written evidence Anderson and Goodlad on behalf of Lerwick port Authority
115 OR Col 3985
116 OR Col 3984
117 OR Col 3985
118 OR Col 4049
authorities in the list of bodies whose unresolved objections would trigger an inquiry goes some way to strengthening the position of harbour authorities.

Heritage Railways

205. Section 21 of the Bill proposes to abolish the use of orders made under the Light Railways Act 1896, thus bringing the process normally used for the approval of such railways within the scope of the main order making procedures set out in the Bill. The Policy Memorandum states that this is for reasons of general consistency of approach.

206. Light Railway Orders are typically obtained by heritage railway organisations to run new railways or to enable lines to be transferred from the successor authorities of the British Railways Board. The trains are limited to operate at low speeds, which enables relaxation of main-line safety provisions.

207. The Heritage Railway Association, in written evidence, said that—

‘The principal concern of the Association is that, if Light Railways Order procedure is abolished (section 21 of the Bill), the costs of authorisation of Scottish heritage railways will be increased substantially, and this may also apply to the costs of construction and operations.’

208. The Committee sought written evidence from heritage railway companies.

209. In response, the Deeside Railway company said that—

‘The Deeside Railway Co Ltd is a company limited by guarantee having no shareholders. It is a "not-for-profit" company controlled by directors who are in turn appointed by the Royal Deeside Railway Preservation Society, a recognised Scottish Charity set up in 1998.

‘The aims of the Society and hence the Company are to re-instate part or all of the former Deeside Railway which was closed in 1966 as a response to the Beeching Report. The line connected Aberdeen with a number of suburbs and small towns including Banchory, Aboyne and Ballater.’

210. It went on to say—

‘It is our position then, that we would like the Committee to consider allowing the continuation of the Light Railway Order procedure in Scotland to assist with the development of those heritage railway operations which require such authorisation. Scotland prides itself on being a premier tourist destination and yet we have a very low proportion of the heritage railways within the UK. The authorisation of the Deeside Railway using a LRO would provide a cost-effective mechanism to allow the railway to be re-instated in stages to service the large numbers of tourists visiting the Deeside area as well as protecting a valuable Heritage resource in its own right.’

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119 Written evidence Heritage Railway Association
120 Written evidence Deeside Railway Co Ltd
211. The Strathspey Railway Co Ltd, in its response, said that—

‘The present system has served the heritage rail industry and the general public for many years in a manner which has become recognised as effective, efficient, relatively simple and relatively inexpensive.

‘It is in the interests of both sides for it to continue; it recognises the fact that heritage railways are fundamentally different from the present –day mainline railway; its relative simplicity is of great appeal to hard-pressed unpaid volunteers who wish to improve their bit of railway with as little paperwork and cost as is practicable.’

212. The Committee put these concerns to the Minister who, in his oral evidence to the Committee explained that the purpose of section 21 of the Bill is to ensure that—

‘…we seek to treat all transport developments in the same way’

213. The Minister went on to say—

‘The fees will not be set until next year, but I assure the Committee that they will not be greater than they are currently.’

214. The Committee welcomes the Minister’s commitment that the fees to be charged to heritage railways under the proposed order making process would be no greater than they are currently, and, on the basis of his assurance, it endorses the intention of section 21 to replace Light Railways Orders with the order making powers proposed by the Bill.

CONCLUSION

215. The Committee considers that there is broad overall support for the proposals contained in the Transport and Works (Scotland) Bill. In this report, the Committee has identified certain places where the proposals in the Bill could be further improved or where the Committee wishes to receive additional information from the Scottish Executive. Subject to these caveats, the Committee recommends to the Parliament that the general principles of the Bill be approved.

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121 Written evidence Strathspey Railway Co Ltd
122 OR Col 4052
123 ibid
REPORT FROM THE FINANCE COMMITTEE

The Committee reports to the Local Government and Transport Committee as follows—

Introduction

1. Under Standing Orders, Rule 9.6, the lead Committee in relation to a bill must consider and report on the bill’s financial memorandum at stage 1. In doing so, it is obliged to take account of any views submitted to it by the Finance Committee.

2. This report sets out the views of the Finance Committee on the Financial Memorandum of the Transport and Works (Scotland) Bill, for which the Local Government and Transport Committee has been designated by the Parliamentary Bureau as the lead committee at Stage 1.

3. The Committee agreed to adopt level 2 scrutiny in considering the Bill, which involved seeking written evidence from organisations financially affected by the Bill, then taking oral evidence from the Executive Bill Team.

4. The Committee took evidence from the Bill team on 12 September, which can be viewed online.

5. The Committee received submissions from British Waterways Scotland; Cairngorm National Park; COSLA; Historic Scotland; Inland Waterways Amenity Advisory Council; Scottish Environment Protection Agency (SEPA); The South East Scotland Transport Partnership (SESTRANS); and Strathclyde Partnership for Transport (SPT). The Committee also received supplementary correspondence from the Scottish Executive. All of this evidence is set out in the Annex to this report.

6. The Committee would like to express its thanks to all those who submitted their views.

Objectives and the Financial Memorandum

7. The Bill seeks to transfer statutory responsibility for scrutinising transport projects from the Parliamentary Private Bill process to Scottish Ministers. If a project is considered to be of national strategic interest, it will require an Order by Scottish Ministers which will be subject to Parliamentary scrutiny. Projects which are not considered to be of national strategic interest will not require to be authorised by way of an Order. However, Ministers may refer a project to the Parliament by means of an Order if they believe the project to be of public interest even if it is not of national significance.

8. In addition, the Bill seeks to replace the Special Parliamentary Procedure (SPP) for transport projects. The SPP is used in cases where there is an unresolved objection between the project sponsor and a statutory body over a development project. The responsibility for making the ruling decision over such objections will be transferred from the Scottish Parliament to Scottish Ministers.

9. The Financial Memorandum estimates the new process could result in increased costs to the promoters of transport projects. The actual cost will depend on the scale of the project but an estimate of an additional £1m per project is given. However, in evidence Scottish Executive officials stated that this figure has since been calculated at £600,000. This increased cost will mainly arise from a greater requirement to consult the public at pre-application stage. As some promoters already undertake a high level of pre-application consultation, then such promoters are unlikely to bear additional costs as a result of this duty.

10. There will also be increased costs for the Scottish Executive - £53,000 per project for scrutiny under the new procedure; £20,000 to process applications (although it is anticipated this will be met
by the promoter) and £2,900 as a result of new SPP processes. On the other hand, there will be savings to the Scottish Parliament - £85,000 per project plus time savings as a result of the Private Bills process not dealing with such projects and £4,500 savings as a result of the new SPP procedures.

Summary of evidence

Scrutiny process

11. The Committee has previously raised concerns over the scrutiny of the costs of major transport projects. It recognises that the initial costs are scrutinised before a project is allowed to process (currently through the Private Bills process). However, there are instances where these initial estimates have significantly increased and it does not appear that there is a transparent mechanism for Parliament to scrutinise any increased costs.

12. When the then Minister for Transport was questioned about this issue during the Committee’s scrutiny of the Executive’s Infrastructure Investment Plan (IIP), he indicated that it would be beneficial to have a better mechanism for tracking the costs of capital projects which could involve the Finance Committee and Parliament saying that “It is important that we are tested on projects regularly and that we consider costs and timetables.” However, no such mechanism is included in this Bill.

13. The Committee had also indicated that there was a need to consider projects collectively and to examine how such projects fit in with Executive priorities. The current Private Bills process and the Executive’s Scottish Transport Appraisal Guidance (STAG) do assess the costs and benefits of projects but on an individual basis.

14. When these points were raised, Executive officials responded that “everyone agrees that it would be better for the cost structures of particular projects to be fairly fixed at the outset, so that there is a higher degree of security than has existed hitherto.” and the STAG process will be reviewed. It is anticipated that proposals will be presented next year and therefore, the new process could be scrutinised at that stage.

15. The Executive went on to outline how this process will then fit into a Strategic Transport Projects Review (STPR) which is currently being undertaken. The purpose of this review is to produce a programme of strategic transport initiatives for delivery in the period 2012-2022 which will support the objectives of the National Transport Strategy. It is intended that the STPR will follow the principles of STAG in terms of its process of scrutiny and assessment and it will be concluded by 2008.

16. Once the output of the STPR is agreed by Ministers, it will form the basis for decisions on the transport contribution to the IIP. Apart from setting out the anticipated projects, the IIP should set out the Executive’s funding for these projects. In turn, the IIP will be seen as being a key input to the National Planning Framework (NPF).

17. Therefore, the Executive’s view is that Parliamentary scrutiny of these interlocking reviews and plans can be undertaken by the appropriate committees at the appropriate times.

18. The Committee recognises that the STPR will allow an opportunity to undertake strategic scrutiny, however it does not believe that the process as outlined will allow the opportunity to scrutinise increased costs of projects beyond the authorisation stage.

19. The Committee appreciates that the review of the STAG process is designed to deliver a better estimate of project costs at the outset, but however robust the initial process is, there is always the possibility that costs will increase due to other factors. The Committee cited the example of the Aberdeen western peripheral route where the route was changed, leading to significant additional costs.

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1 Stephen, Official Report, 26 April 2005, Col 2546
2 Henderson, Official Report, 12 September 2006, Col 3877
20. The Executive did indicate that projects such as this would be included in the NPF and would be subject to Parliamentary scrutiny as they would meet the criteria of a project of national significance. However, the Committee is still not convinced that this will in any way address concerns over Parliament’s opportunity to scrutinise rising costs.

21. In confirming that a process to look at costs beyond authorisation stage is not included in the Bill, the Executive stated that:

“The Scottish Executive is the predominant funder of most public transport. We hope that cost overruns will not happen, but if they do, the minister is accountable for them to Parliament at all times. Budget revision, budget scrutiny and the infrastructure plan provide mechanisms for accountability.”

22. While it is correct that such costs can be contained within these various budgetary documents – these are large and complex documents covering the Scottish budget in its entirety.

23. To ensure a more transparent process and in recognition that major transport projects can commit large parts of the Scottish Budget, the Committee recommends that:

- the Finance Committee should have a scrutiny role in the authorisation process relating to large capital projects;
- that the IIP should be regularly updated and the Finance Committee and the relevant subject committee should consider the updated IIP on an annual basis; and
- a system should be put in place whereby when it is known that project costs will significantly overrun, the revised costs should be reported to Parliament (through the Finance Committee and relevant subject committee) at that time.

24. The Committee will consider, together with the Minister for Finance and Public Service Reform, how these recommendations might be taken forward. In addition, the Committee recommends that the lead Committee raise these issues with the Minister for Transport.

Related projects requiring authorisation

25. The Committee questioned whether matters related to specific capital projects (such as water and sewerage) would be dealt with under the same procedures as outlined in the Bill or whether separate procedures would be used. The Executive confirmed that transport-related matters connected with projects (such as access road to link to railways) will be covered by the procedures in the Bill, but issues such as water and sewerage will not. Such issues would be dealt with under existing planning laws.

26. The Committee was concerned that having separate procedures would involve more time and money and asked whether systems under this Bill and those under the Planning (Scotland) Bill could in some way be drawn together. Initially, the Executive officials responded that they had worked closely with their planning colleagues but appeared to say that the provisions of the Bill could not be linked because the Planning Bill was at a more advanced stage than this Bill. Officials then went on to say:

“the Planning etc (Scotland) Bill seeks to streamline all the processes to do with national, major and local developments. As far as possible, when a proposed transport development has ramifications for other aspects of planning, we will seek to streamline activity. The Transport and Works (Scotland) Bill will allow us to conjoin inquiries so that there can be synergy and so that issues can be discussed and addressed in the round, in particular when Scottish ministers will be the decision makers in both instances.”

3 Henderson, Official Report, 12 September 2006, Col 3878
Fees

27. The Executive officials were asked about the level of fees which would have to be paid by a promoter to cover the costs of examination of the project by the Scottish Executive Inquiry Reporters Unit (SEIRU). The FM explains that the level will be set under secondary legislation; however, it gives an illustrative figure of £20,000.

28. The Executive explained that it is still to consider whether the same level of fee should apply to private developers, public developers and charities and that it wanted to arrive at a level which was proportionate and neither acted as a disincentive to bodies coming forward with proposals or encouraged proposals that had not been thought through. The guiding principle for the Executive is that the level of fee should be such that there should be no cost to the public purse.

29. Given this principle that costs on the public purse should be met by the promoter, the Committee questioned why staff costs had not been included in illustrative figures of £20,000. The Executive responded that as most proposals that come forward will relate to public transport and be for “the public good”, then it is reasonable that the Executive should meet staffing costs and that the only cost to the promoter should be for the cost of examinations.

30. The Committee is not entirely convinced by the logic of this. It could be argued that either there should be full cost recovery (including staff costs) or the current system of a flat-fee should be maintained. However, the Committee notes that the Executive will be undertaking full consultation in advance of producing secondary legislation.

31. The Committee also questioned the Executive about the suggestion that financial aid should be provided to objectors. Officials explained that there is currently no provision in the Bill to provide such aid and that, subject to certain statutory requirements, objectors could take advice through civil legal aid. However, they noted that if this issue were raised during consultation, then it could be dealt with by way of secondary legislation. However, if aid were to be given, the Executive currently does not have a view as to whether the promoter or the Executive would meet the costs.

Conclusions

32. While the Committee notes the Executive’s clarification of the mechanisms through which projects will be assessed and scrutinised, it remains concerned that there is no formal mechanism in the bill for Parliament to scrutinise any changes in the capital costs of projects after the authorisation process has taken place and that a more regular and robust method of authorisation and reporting should be introduced. As described in paragraph 23 the Committee recommends that the Finance Committee should have a scrutiny role in the authorisation process; that the IIP should be updated regularly and scrutinised by the Finance Committee and relevant subject committees on a regular basis; and a process should be put in place so that when it is known that project costs will significantly overrun, the revised costs should be reported to Parliament (through the Finance Committee and relevant subject committee) at that time. The Committee will consider, together with the Minister for Finance and Public Service Reform, how these recommendations might be taken forward. In addition the Committee recommends that the lead Committee raise these issues with the Minister.

33. Given that decisions on the level of fees have not yet been taken and will be brought forward by way of secondary legislation, the Committee would like to flag up that it would be interested in scrutinising such legislation.
The Committee reports to the lead committee as follows—

Background

The Committee’s previous inquiries
1. The Transport and Works (Scotland) Bill was developed by the Executive following its acceptance of a recommendation by the Procedures Committee in our 4th Report, 2005, Private Legislation.

2. A major theme of the inquiry that led to that Report was consideration of whether the Parliament’s current Private Bill process (Chapter 9A of the standing orders) should be replaced—at least in relation to transport-related projects—with a new statutory system that would remove from the Parliament the principal responsibility for handling the relevant applications.

3. We initially considered three models for how such a new system might work—the model of the Transport and Works Act 1992 that currently applies in England and Wales; the model of the Private Legislation (Procedure) (Scotland) Act 1936, which applied to most Scottish applications prior to devolution; and a “semi-Parliamentary” model that would combine elements of a Private Bill process with extra-Parliamentary local inquiries. Further consideration led us to a fourth model, based on the 1992 Act but with additional Parliamentary scrutiny and involvement, which we called the “TWA-plus” model, and this is the one we finally recommended to the Parliament. An outline of how that model might work was developed for us by a working group of Executive and Parliament officials and was published in an annexe to the Report. While we did not necessarily endorse every detail of that model, we were clear that it was the right general basis on which to proceed.

4. Our Report was debated in May 2005 and was supported unanimously in the Chamber.

5. Towards the end of 2005, we were asked by the Bureau to consider, as an interim measure, an Executive proposal to allow Private Bill Committees to appoint independent “assessors” to conduct on their behalf most of the detailed scrutiny of the Bill and objections to it. We carried out a short inquiry on this issue, and in our 1st Report, 2006 (Private Bill Committee assessors), agreed to support the Executive proposal. The Rule-changes we proposed to achieve this outcome were agreed to by the Parliament in January this year.

Development of the Bill

6. The First Minister announced the Bill in his legislative programme statement in September 2005, saying:

“Too many critical transport projects that we have planned are taking too long to implement. That is why, in the next parliamentary year, we will legislate to simplify the process for handling applications for changes with a transport and works bill.” (col 18782)

7. In February this year, the Executive launched a consultation on the proposed Bill. The Committee considered the consultation document in April and wrote to the Executive expressing concern about the apparent dilution of the Parliamentary elements in the proposals compared with the Committee’s original model.

8. The Bill was introduced in June and referred to the Procedures Committee as secondary committee.

The Committee’s inquiry
9. In the limited time available, and given the relatively narrow scope of our interest, we have restricted ourselves to taking oral evidence from the Executive and inviting written evidence from other parties in the Parliament.
10. The Convener wrote to business managers in July offering them a chance to comment. Alasdair Morgan replied on behalf of the SNP. A general call for evidence on the Committee’s website led to two submissions from the British Ports Association and TRANSform Scotland.

11. The Minister for Transport, Tavish Scott MSP, supported by officials, gave oral evidence to the Committee on 12 September. We are grateful also to officials for the useful briefing they provided to Committee members the previous week.

**General comments on the Bill**

12. Given the above background, the Procedures Committee strongly supports this Bill in general terms. We argued in 2004, and continue to believe now, that a statutory system for authorising transport projects by Executive order is a major step forward from the current Rule-based system for authorising such projects by Private Bill. In particular, it will bring the system for authorising rail projects broadly into line with the existing system that applies to major road projects, thus removing from MSPs a substantial burden of work for which they are not particularly well-qualified and transferring it instead to a system of detailed scrutiny by independent inspectors and decision-making primarily by Ministers. This has the potential to greatly increase the overall clarity and efficiency of the process, to the benefit both of promoters and objectors.

13. We also commend the Executive for bringing the Bill forward so promptly, following our earlier inquiry. Although the timetable is quite challenging, it should certainly be possible for the Bill to complete its passage before the end of the session, as we had recommended. As a result, the number of Private Bills in Session 3 should be very substantially reduced from its current level.

14. Our main doubts about the Bill, however, are in relation to the extent and nature of Parliamentary involvement in the process by which Ministers decide whether to make a transport-related order under the powers set out in section 1.

15. We fully support, of course, a substantial reduction in the Parliament's current level of involvement – any Bill to replace a wholly Parliamentary system with an order-based system largely operated by the Executive is bound to have this effect. But we deliberately advocated the “TWA-plus” model, rather than the model of the 1992 Transport and Works Act itself, in an effort to retain for the Parliament a meaningful scrutiny and oversight function. Our concern is that the Bill substantially alters the balance we had aimed to strike, removing many of the Parliamentary checks and balances we had envisaged being included.

**Two opportunities for Parliamentary oversight**

16. Perhaps the most obvious departure from the “TWA-plus” system we recommended in 2005 is the Executive’s rejection of the case for formal Parliamentary involvement at two distinct stages in the order-making process. In our 2005 report, we called for a statutory system in which “the Parliament would have an opportunity to scrutinise and, if need be, reject, any such order both early in the process and at the end” (paragraph 118). To some extent, we reached this view partly to reflect what Ministers themselves said in evidence to the Committee in February 2005, when they called for “Parliamentary scrutiny and approval at key points” in the process.

17. The Executive, in its consultation document, distanced itself from this proposal and, in oral evidence, Tavish Scott claimed backing for this from other stakeholders. They had, he said, “made three points: first, the process could risk being delayed by the parliamentary timetable; secondly, scrutiny at that stage would pre-empt detailed consideration of the project by a reporter; and thirdly, a full consideration of the issues would be required by Parliament to make an informed judgment.

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1 The Bill will remove the need for promoters requiring private legislation for a railway or similar transport system, or an inland waterway, to proceed by means of a Private Bill in the Parliament. The Private Bill route will remain, however, as the only available mechanism for promoters requiring private legislation for other, wholly devolved purposes.

As a result, they felt that such an approach would not be conducive to an efficient process” (col 1604).³

18. We recognise some force in these arguments. Even in 2004 we were conscious of the risk that any formal Parliamentary endorsement of individual projects at an early stage could be seen to pre-judge the outcome of a detailed examination (for example, by public inquiry).⁴ That, arguably, is an issue with the current Private Bill process, which involves Parliamentary approval of the “general principles” of a Bill before the detailed consideration of the Bill (and the substantive hearing of objections) begins.

19. We also recognise that the context has changed since 2004. As the Minister explained in oral evidence (cols 1598-1600)⁵, the system proposed in the Bill is designed to mesh with the new regime being put in place by the Planning etc. (Scotland) Bill. At least so far as transport projects that qualify as being of national significance are concerned, the Parliament will have various scrutiny opportunities, in committee and the Chamber, before any application for private legislation is made. These will include scrutiny of the National Planning Framework (NPF), the national transport strategy and the strategic projects review, in addition to such existing mechanisms as members’ ability to hold Ministers to account through oral questions (cols 1598-1600).

20. Taking these factors into account, we accept that individual applications for private legislation need not be subject to formal Parliamentary endorsement (for example, by approval of an Executive motion) at an early stage in their consideration. But this makes it all the more important for there to be proper Parliamentary scrutiny at the end of the process.

21. In that context, we do not believe that the general scrutiny opportunities referred to by the Minister are an adequate substitute. The Planning etc. (Scotland) Bill does not guarantee sufficient scrutiny of the National Planning Framework to ensure that each particular proposal is examined and debated in adequate detail. Similarly, neither debates on the national transport strategy and the strategic projects review, nor individual members’ use of PQs, is likely to reveal sufficient information about particular road or rail projects to enable the Parliament to make a properly informed decision.

Parliamentary approval only for “nationally significant” projects

22. A separate but related concern is that the Bill only requires a section 1 order to be subject to Parliamentary approval if it authorises “the carrying out of work which would constitute a national development” – which means that it features as such in the NPF – or, otherwise, if Ministers so direct (section 13(1)). This gives Ministers a significant degree of discretion over whether Parliamentary approval is required, given that Ministers have the major role in determining what is included in the NPF in the first place. It also means that lesser orders are not subject to any formal Parliamentary approval at all.

23. This is a substantial departure from the Committee’s original model, which envisaged all orders being subject to Parliamentary control, either affirmative procedure in relation to orders to authorise a project or negative procedure in the case of orders merely to alter or extend an existing project.⁶

24. According to Tavish Scott, the Executive’s general approach has been to devolve decision-making for local transport issues to regional transport partnerships, and that it would be no more appropriate for the Parliament to have to approve every minor rail project than for the Executive to “micromanage” local authorities’ roads budgets (col 1601). He recognised that there was a considerable element of judgement in deciding what was “nationally significant” – for example “a

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³ See also Policy Memorandum, paragraph 145.
⁴ See 4th Report, 2005, Annexe C, 1st Report by Officials, paragraphs 20 and 47-49
⁵ See also supplementary written evidence: letter by Frazer Henderson (reproduced in the Appendix)

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relatively small project in monetary terms that tackles a strategic pinchpoint … could make a phenomenal improvement”. However, even though “it could be argued” that such a project would be nationally significant “we should simply get on with it. It would not be right to hold it up in endless parliamentary procedure” (cols 1601-2).

25. We do not believe, however, that making all orders made under section 1 of the Bill subject to some formal Parliamentary control need impose significant delays. We also believe that such controls are important in principle – the Parliament should be prepared to delegate power to Ministers to deal with the details of an issue, but where the scope of these delegated powers are significant – as they often are when the private interests of individuals are at stake – the Parliament should retain the formal ability to overturn Ministerial decisions. At the same time, we recognise that some of the orders that could be made under section 1 will be far more important than others, and for that reason would be quite content with many of them only being subject to negative procedure (i.e. subject to annulment) rather than affirmative procedure (i.e. approval by resolution).

26. Another advantage of having all section 1 orders subject to some form of Parliamentary control – albeit only negative procedure in most cases – is that they would automatically be subject to scrutiny by the Subordinate Legislation Committee. Such scrutiny, particularly of the vires of instruments, is an important part of the overall system of checks and balances between Executive and Parliament, and applying it here should help to address some of the concerns that have been raised by that Committee in its delegated powers scrutiny of the Bill.

27. In addition, we question the appropriateness of Ministers themselves having so much influence over deciding what (if any) Parliamentary control individual section 1 orders should be subject to. We see a case for this being decided on more objective grounds – for example, by distinguishing orders that authorise the construction or re-opening of a railway from orders that merely change how such a railway operates; or between orders that have been subject to a public inquiry and those that have not; or between orders that include the amendment or repeal of existing primary legislation and those that do not.

28. Having said that, we understand why the Executive prefers to use the distinction between projects that are “nationally significant” and those that are not, given its wider aim of tying this Bill into the National Planning Framework. Therefore, so long as all section 1 orders were subject to some form of Parliamentary control, we would be content for “national significance” to be the criterion for deciding the nature of that control (i.e. whether it is negative or affirmative procedure).

29. Despite the subjectivity it inevitably involves, reliance on “national significance” at least provides a clear basis for treating some orders differently from others. We therefore question the rationale for section 13(1)(b), which gives Ministers the ability to include projects that don’t qualify as nationally significant among those that are subject to Parliamentary approval. If such flexibility is needed at all, we believe it should be exercisable by the Parliament as well by Ministers. In this way, the Parliament would retain some direct control over the projects it is able to scrutinise more carefully. Without some such counterbalance to Executive discretion, there would be little to prevent Ministers cherry-picking for Parliamentary endorsement those projects most likely to be seen as politically attractive, while in otherwise similar cases denying MSPs the ability to vote against locally controversial projects.

30. In summary, we believe that all section 1 orders must be subject to some form of Parliamentary control. The Parliament or the relevant committee may quickly decide that a particular order is straightforward and does not require detailed scrutiny, but the opportunity for scrutiny must be there. And if there is to be a hierarchy of projects, with those perceived to be less important receiving less scrutiny, this hierarchy should not be decided only by Ministers. Either the criteria should be set out objectively in the Bill, or the Parliament should have the same right as Ministers to decide which projects are more important.
Different procedures for Executive-promoted orders

31. The final concern we expressed at the consultation stage was about the lack of any formal distinction, in relation to Parliamentary scrutiny of orders, between those projects promoted by the Executive itself and those promoted by third parties.

32. In our original report, we recommended additional procedural safeguards for when Ministers were acting both as promoters and decision-makers, including a "super-affirmative" procedure for approving the final order. But Tavish Scott rejected the idea that this was necessary. Pointing to the current Private Bills being promoted by local authorities, he said: “The blunt truth is that we are promoting those schemes and, broadly we are paying for all of them to a greater or lesser extent. They are Government projects” (col 1610).

33. We accept the Minister’s contention that there is in practice little difference between projects promoted by the Executive (under section 6 of the Bill) and those promoted by a local authority or other body (under section 4) but dependent on Executive funding. In either case, there could be at least a perception of conflict of interests for Ministers if they are both backing a project in some way and taking the key decisions about how it is scrutinised and whether it is approved.

34. Having an Executive-centred process has many practical advantages – which is why we recommended it in 2005. But it depends on Ministers being, and being seen to be, fair and detached in their decision-making capacity.

35. We can accept the Executive’s reasons for resisting a procedural distinction based solely on whether the Executive is promoting a project. But the general need to create confidence in the integrity of the process adds to our conviction that the decision-making powers conferred on Ministers by the Bill need to be balanced by a greater role for the Parliament. In other words, we can accept that there is no need for any section 1 orders to be subject to a “super-affirmative” procedure so long as – as recommended above – all such orders are subject to either affirmative or negative procedure.

Rights of objectors in relation to inquiries and hearings

36. Another aspect of the Bill that provoked comment in the Committee concerns the rights of objectors under section 9. This section ensures that local authorities or National Park authorities, or people with rights over land that is to be compulsorily purchased, can require an inquiry or hearing to be held. But for other objectors – including, for example, those with rights over adjacent land which will be blighted by the development – there are no such guarantees, only the discretion of the Minister to rely on. We believe there is a case for requiring either a public inquiry or a hearing to be held whenever there are any objections (other than the frivolous or trivial) still outstanding after a reasonable period (i.e. after the promoter has had an opportunity to negotiate for their withdrawal). We recognise that this is not really an issue that falls within this Committee’s remit in relation to the Bill, but we draw it to the attention of the lead committee as an issue worthy of close scrutiny.

Conclusion

37. The Procedures Committee welcomes this Bill as giving effect to the broad thrust of its 2005 recommendations for a new statutory system to take the place of the Private Bill process for transport-related projects. We have a number of related doubts, however, about the level of formal Parliamentary oversight of the process to which we will return, if necessary, at Stage 2.
The Committee reports to the lead committee as follows—

Introduction

1. At its meetings on 5 September and 19 September, the Subordinate Legislation Committee considered the delegated powers provisions in the Transport and Works (Scotland) Bill at stage 1. The Committee submits this report to the Local Government and Transport Committee, as the lead committee for the Bill, under Rule 9.6.2 of Standing Orders.

2. The Executive provided the Parliament with a memorandum on the delegated powers provisions in the Bill.

3. The Committee’s correspondence with the Executive is reproduced in Annexes 1 and 2.

4. The Committee also took oral evidence from Executive officials on 19 September 2006 (cols. 1967 to 1982 – see Annex 3).

Delegated Powers Provisions

5. The Committee considered each of the delegated powers provisions in the Bill. The Committee approves without further comment: sections 12 and 27.

6. The Committee was also content with the Executive’s written response to questions it put in its letter (see Annexes 1 and 2) in relation to sections 6, 8, 14, 25 and 26.

General

7. The Committee put a number of general questions to the Executive. It asked the Executive why it considered that section 27(6) (which confers supplemental, incidental etc. provisions) was necessary. Unusually, the power includes specific provision to amend the terms of the Bill itself. This provision is not included in the equivalent UK statute.

8. In its response at Annex 2, the Executive emphasised that the context of the Bill is to seek to avoid a requirement for Private Bills to deliver the relevant transport projects. It considers that it would be unfortunate that this aim might not be achieved, depending on the circumstances of a particular project, due to a shortfall in the powers under the Bill. The Executive also commented that the power in section 27(6) is not freestanding, rather it is parasitic on the exercise of another power under the Bill, and the provision under it will have a connection to that – otherwise any provision under it could not properly be described as supplementary to, or in consequence of it.

9. The Executive added that in the case of this Bill the need for this power is greater than normal as it is impossible to anticipate all of the matters which a third party promoter for a project might seek to have covered by an order under section 1 of the Bill. The power would also allow provision to be made to make augmentations to the policy where that is consistent with the Bill and the terms of the delegated powers within it.

10. With regard to the lack of a similar power in the 1992 Act, the Executive noted that in practice transitional provisions have been expressly made in exercise of the delegated powers under the 1992 Act and gave examples in its response.

11. To assist the lead Committee’s examination of the Bill, the Executive helpfully provided four illustrative draft Instruments; namely Rules under sections 4 and 8; Regulations under section 14(3); an order under section 18(1)(a); and an order under section 18(1)(b). In its response, the Executive analysed the proposed use of section 27(6) as authority for provisions in the draft Rules and in the 2 orders under section 18(1).

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1 Delegated Powers Memorandum
12. The Committee’s comments caused the Executive to reconsider two points arising in relation to the terms of section 27 of the Bill as follows:

**Procedure for instruments under sections 12(18) and 29(3)**

The Committee noted it would be hypothetically possible for a Commencement Order under section 29(3), and an Order under section 12(18), to contain provision modifying primary legislation pursuant to section 27(6) without being subject to affirmative procedure. The Executive agreed to address this possibility, and proposes to bring forward an amendment to section 27(3)(a) so that if either such provision modified primary legislation then it would fall to be subject to affirmative procedure. **The Committee welcomes the Executive’s response and agreed to monitor the position at Stage 2. It draws the attention of the lead committee to the Executive’s commitment to bring forward an amendment.**

**Modifications to the Act following on from this Bill**

13. The Committee noted that the power under section 27(6) is drafted so that it would also allow modification to the Act following on from this Bill and other subordinate legislation under it. The Executive acknowledged that the power goes further than it is likely to require. It was noted that any modifications to other subordinate legislation under the powers in the Bill could be achieved by the exercise of those powers themselves.

14. The Executive noted the Committee’s comments in relation to section 18, where it pointed out that orders under this section of the Bill might be used to modify powers in relation to offences and penalties in relation to the access regime. The Executive confirmed this was not its intention and hoped to address the concern by bringing forward an amendment at stage 2 to narrow section 27(6) so that it does not allow the powers to be used to modify the Act following on from the Bill itself. **The Committee welcomes the Executive’s response and agreed to monitor the position at Stage 2. It draws the attention of the lead committee to the Executive’s commitment to bring forward an amendment.**

15. The Committee asked the Executive to provide confirmation of whether provision section 27(6) (particularly as read with section 2(3) and section 6) applies to previously enacted Private Transport Bills.

16. The Executive confirmed that the powers in section 2 and 27(6) do indeed allow for the application and modification of any enactment and this could cover earlier private Acts passed by the Parliament in relation to transport projects.

17. In its written response, the Executive gives examples of the situations where the need for this power may arise.

18. At its meeting on 19 September the Committee pointed out to the Executive that “section 1 essentially empowers Ministers to make orders about the operation of a “transport system”. The transport system in question might be a specific piece of infrastructure or it might be the whole transport system. Therefore, it seems quite possible that, as long as the order included a cross-reference to section 1, Ministers would be entitled to say “I am pursuing this in the interests of the transport system, so it is pertinent to use section 27(6)”” (col.1969).

19. In its written response and also at the meeting of 19 September (col. 1970), the Executive reiterated that the use of the section 27(6) power could only arise in relation to the exercise of the power under section 1 of the Bill and so the exercise of the power is always tied back to the terms of the Bill.

20. The Executive accepted that there is an element of overlap between the terms of section 2(3) and (4) and 27(6)(b) as well as within the different elements within section 27(6)(b) but explained that there are aspects of any given element that are not covered by the others. The Executive also repeated its comments in this connection that it would be unfortunate if the desire to avoid the requirement for a private Bill to deliver a transport project should fail because of an insufficiency in powers to deliver a matter at the margins of a project.
21. The Committee is extremely concerned that the power could be used by the Executive to amend provisions in a private Transport Act without being subject to any Parliamentary procedure. It recommends that such amendments should be subject to Parliamentary procedure. The Executive agreed to reflect on the concerns expressed by the Committee in this regard, and the Committee draws this to the attention of the lead committee.

22. It is the Committee's view that although a power under section 27(6) alone could not be used to repeal an Act or revoke an order, the power under section 1 is a power to make an order "relating to or to matters connected with the construction or operation of a transport system" and coupled with the powers under sections 2(3) and 27(6)(b) would permit the modification or repeal of private Acts. Whilst the Executive in its response has given positive illustrations of how the powers might be used, and whilst the Committee is not unhappy with the power itself, it considers that there are circumstances where it could be used widely, with consequences in which Parliament would be interested.

23. While the Executive agreed to reflect on the Committee's concerns, the Committee draws the attention of the lead committee to its concerns about the width of this power to and will monitor the position again at Stage 2.

Delegated Powers Memorandum – sections 10, 23, 24 and 25

24. The Committee asked for the Executive's comments on the lack of information provided by the Executive in the Delegated Powers Memorandum in relation to sections 10, 12 and 25 of the Bill.

25. Sections 10(3) and 10(4) apply provisions in section 210 of the Local Government (Scotland) Act 1973 which are not covered in the Delegated Powers Memorandum. The Executive, in its response, explained that in terms of Rule 9.4A of the Standing Orders of the Scottish Parliament, there is to be lodged in respect of an Executive Bill a memorandum setting out various matters in relation to each provision of the Bill "which contains any provision conferring power to make subordinate legislation". The Executive argued that whilst it might be noted that section 210 of the 1973 Act does contain delegated powers, those are set out in the 1973 Act, not this Bill. The Executive proceeded on the basis therefore that the Bill could not be said to contain any provision conferring power to make subordinate legislation. It argued that the power already sits in the 1973 Act and that is the enabling power to be cited when the power is exercised and not a power in the Bill.

26. The Executive argued that the functions affected by sections 23, 24 and 25 already exist and the powers themselves are not being modified. It cited the relevant powers in sections 5 and 7 of the Roads (Scotland) Act 1984, sections 14, 15, 16 and 18 of the Harbours Act 1964, and section 1 of the Pilotage Act 1987. In each case when these powers are exercised it will be those enabling powers which are cited not the enabling powers under the Bill. Therefore, the Executive proceeded on the basis that the Bill did not contain a "provision conferring power to make subordinate legislation" so that rule 9.4A did not require the Delegated Powers Memorandum to cover these matters.

27. The Committee has in practice always considered all of the powers in a Bill irrespective of whether those powers are drafted as modifications of powers in existing legislation. As a result of such scrutiny, defects in drafting have been identified leading to amendments being made by the Executive - for example recent changes proposed to the powers in the Adults with Incapacity (Scotland) Act 2000 and the Electoral Arrangements (Scotland) Bill.

28. The Committee considers that the Executive’s interpretation of the Standing Orders is outwith the spirit of the legislation. Moreover, it shows a lack of consistency with the information provided in other DPMs provided by the Executive where an explanation of subordinate legislation contained in earlier Acts, has to date been included.

29. In the Committee’s view, building on existing powers to make subordinate legislation does not absolve the Executive from the need to prepare a DPM on the powers as amended. To do so
would be to create a very significant loophole in the procedures and the Committee’s own remit with regard to the scrutiny of delegated powers. The Executive’s interpretation would enable very significant changes even amounting in practice to new powers to be introduced without the need for specific justification by the Executive or scrutiny by the Committee.

30. The Committee recommends that all delegated powers in an Executive Bill should be addressed in the DPM, not least so that the Committee can see any procedural changes or changes in the use of the powers, from what it might have expected under previous legislation that it had not considered. The Executive agreed to reflect on this.

31. The Committee agreed to pursue a change to Rule 9.4A of the Standing Orders of the Scottish Parliament to ensure consistency of approach to the provision of information in DPMs.

32. The Committee draws the attention of the lead committee to its concerns in relation to the information provided in the DPM which accompanies this Bill.

Section 1: Orders as to Transport Systems and Inland Waterways

33. The Committee asked the Executive to clarify the word “procedure” in section 13(6) and whether this refers only to Parliamentary procedure under that section rather than to the inquiry and other procedure to which any order under section 1 is subject.

34. The Executive, in its response, confirmed that the word “procedure” is intended only to refer to Parliamentary procedure and proposes to bring forward an amendment at Stage 2 to clarify that in view of the doubt expressed by the Committee. The Committee welcomes the Executive’s response and agreed to monitor the position at Stage 2. It draws the attention of the lead committee to the Executive’s commitment to bring forward an amendment.

35. The Committee also asked the Executive whether section 13(6) would prevent Ministers from exercising the powers under section 13(1)(b).

36. The Executive, in its response, explained that as the Committee anticipated, the thinking behind section 13(6) is the terms of paragraph 11 of Schedule 1 to the Scotland Act 1998 (Transitory and Transitional Provisions) (Publication and Interpretation etc. of Acts of the Scottish Parliament) Order 1999 regarding an implied power to amend and revoke a provision exercisable in the same manner (i.e. subject to the same procedure) as the original Instrument. This is on the basis that whilst the original project might have been subjected to affirmative procedure under section 13, the Executive considers that to be disproportionate for any future modification or revocation. The Executive has indicated that it will bring forward an amendment so that section 13(1)(b) is not ruled out for an amending, re-enacting or revoking instrument should Ministers wish such an instrument to be subject to a direction under that provision. The Committee welcomes the Executive’s response and agreed to monitor the position at Stage 2. It draws the attention of the lead committee to the Executive’s commitment to bring forward an amendment.

37. The Committee also asked the Executive whether the wording of section 12(14) was correct. The Executive accepted the Committee’s point (that in failing to take account of the provisions of section 13(6) this would mean that the Parliament was not informed of the making of an order), and in light of this proposes to bring forward a clarifying amendment at Stage 2 to remove any doubt. The Committee welcomes the Executive’s response and agreed to monitor the position at Stage 2. It draws the attention of the lead committee to the Executive’s commitment to bring forward an amendment.

Section 4: Applications - the terms of subsection (4)(a) and (7)(a)

38. The Committee questioned the drafting of this provision which appeared to give powers to Ministers to give Directions to themselves with which they had to comply. The Executive, in its response, agreed that it would not be appropriate for Scottish Ministers to give directions to
themselves and that it would be helpful to remove subsection (7)(a). It proposes therefore to bring forward an amendment at Stage 2. **The Committee welcomes the Executive’s response and agreed to monitor the position at Stage 2. It draws the attention of the lead committee to the Executive’s commitment to bring forward an amendment.**

**Section 7: Model Provisions**

39. The Committee noted that there is no provision for guidance to be issued in any particular form or for it to be subject to any Parliamentary procedure. Similar powers in the 1992 Act require those powers to be exercisable in the form of a statutory instrument, not subject to Parliamentary procedure. The Committee was aware that model provisions incorporated in an SI ensures their publication. It asked the Executive to clarify its intentions in relation to the status of the guidance – and whether the model provisions should be included in a statutory instrument.

40. The Executive, in its response, explained that the model provisions would not be incorporated in a statutory instrument and will not be mandatory. Any guidance will be advisory and therefore there will be no requirement for the promoter to adopt the model provisions. If guidance is produced it will be for the purposes of assisting the promoter in preparing a draft order which conveys the promoter’s intentions, and include all pertinent issues in respect of the content of the order. The Executive considers that it will also encourage promoters to adopt an appropriate style and a readily understandable format.

41. The Executive confirmed that it is considering whether it would be helpful to include in the Bill, a duty on ministers to publish guidance. At the Committee meeting on 19 September, the Executive indicated that it would lodge an amendment to ensure that the provisions are published. **The Committee welcomes the Executive’s response and agreed to monitor the position at Stage 2. It draws the attention of the lead committee to the Executive’s commitment to bring forward an amendment.**

**Section 18: Access to Land**

42. The Committee was concerned about the sweeping powers under section 27(6) and how under these powers all such provisions could be changed. Consideration of issues arising under section 27(6) is set out in paragraphs 7-24 above.

43. The Executive has agreed to reflect upon the power under section 27(6) to modify the Act which will follow on from this Bill, as opposed to other enactments. **The Committee welcomes the Executive’s response and agreed to monitor the position at Stage 2. It draws the attention of the lead committee to the Executive’s agreement to reflect upon the power to modify the Act.**

**Sections 23 and 24: Amendments to the Roads (Scotland) Act 1984 and the Harbours Act 1964 respectively**

44. The Committee asked the Executive if it is deliberate that the amendment made by section 23 to the Roads (Scotland) Act 1984 does not appear to have an equivalent provision to section 13(6).

45. The Executive, in its response, confirmed that the omission was deliberate. It explained that no equivalent provision is required to parallel the provision in section 13(6) providing for different procedure to apply to an Instrument modifying or revoking an earlier one, as powers to revoke and modify an earlier instrument are contained in section 145 of the Roads (Scotland) Act 1984. It added that there is therefore no need to imply powers to amend and revoke from paragraph 11 of Schedule 1 to the Scotland Act 1998 (Transitory and Transitional Provisions) (Publication and Interpretation etc. of Acts of the Scottish Parliament) Order 1999, which then attracts the requirement to do so in the same manner (i.e. subject to the same procedure) as the original exercise of the power.

46. **The Committee notes the Executive’s response but considers that the drafting of the sections 23 and 24 leaves the situation open to doubt particularly in the case of the Roads**
Local Government and Transport Committee, 15th Report, 2006 (Session 2) –
ANNEXE A

(Scotland) Act 1984. It asked the Executive to reflect on the drafting of the amendments to ensure that the policy intention is accurately reflected in these (col. 1980). The Committee draws this concern to the attention of the lead committee.

47. The Executive was also asked to comment on whether a consequential amendment ought also to be made to section 144 of the 1984 Act to include a reference to section 143A, if only to ensure consistency with the current wording of section 144. The Executive, in its response, agreed with the Committee's point and proposes to bring forward an amendment at Stage 2. **The Committee welcomes the Executive’s response and agreed to monitor the position at Stage 2. It draws the attention of the lead committee to the Executive’s commitment to bring forward an amendment.**

Section 29 – Short title and Commencement

48. The Committee was concerned to note that the commencement power could include supplementary provisions that amend primary legislation but would not be subject to Parliamentary scrutiny.

49. In its response, the Executive indicated that it will seek to bring forward an amendment so that any use of the power to amend primary legislation would be subject to affirmative procedure. **The Committee is content with the Executive’s response and agreed to monitor this position at Stage 2. It draws the attention of the lead committee to the Executive’s commitment to bring forward an amendment.**

50. The Committee also commented on two drafting points in relation to this section, which are set out in its letter at Annex 1.

51. The Executive, in its response, confirms that with regard to the commencement of section 27, it proposes to bring forward an amendment to section 29 so that that section also comes into force on Royal Assent.

52. It also agreed, in relation to the wording in section 29(2) regarding commencement on Royal Assent, that it will bring forward an amendment to refer to the day after Royal Assent as suggested by the Committee. **The Committee welcomes the Executive’s response on these points and will monitor the position at Stage 2. It draws the attention of the lead committee to the Executive’s commitment to bring forward an amendment.**
MINUTES

19th Meeting, 2006 (Session 2)
Tuesday 27 June 2006

Present:

Fergus Ewing (Deputy Convener)  Dr Sylvia Jackson
Paul Martin                     David McLetchie
Michael McMahon                 Bristow Muldoon (Convener)
Mike Rumbles                    Tommy Sheridan
Ms Maureen Watt

The meeting opened at 2.03 pm.

3. **Transport and Works (Scotland) Bill (in private)**: The Committee considered its approach to this bill.

The meeting closed at 3.44 pm.
Present:

Fergus Ewing (Deputy Convener)  Paul Martin
David McLetchie  Michael McMahon
Bristow Muldoon (Convener)  Mike Rumbles
Tommy Sheridan  Ms Maureen Watt

Apologies were received from Sylvia Jackson

The meeting opened at 2.02 pm.

2. **Transport and Works (Scotland) Bill**: The Committee took evidence on the general principles of the Bill at Stage 1 from—

   Tricia Marwick, MSP Former Convener of Waverley Railway (Scotland) Bill Committee;
   and Jackie Baillie, MSP Former Convener of Edinburgh Tram (Line One) Bill Committee

   and then from—

   John Halliday, Assistant Chief Executive, Transport and Strategy, Strathclyde Partnership for Transport

   and then from—

   James Fowlie, Policy Manager, COSLA; Euan MacLeod, Shepherd and Wedderburn on behalf of Shetland Islands Council; and Councillor Chris Thompson, South Lanarkshire Council.

5. **Transport and Works (Scotland) Bill – witness expenses**: The Committee agreed to delegate to the Convener responsibility for arranging for the SPCB to pay, under Rule 12.4.3, any expenses of witnesses for the Transport and Works (Scotland) Bill.

6. **Transport and Works (Scotland) Bill**: The Committee considered an updated approach paper on the Bill and agreed witnesses for future meetings.

The meeting closed at 4.43 pm.
Present:

Fergus Ewing (Deputy Convener)          Paul Martin
Michael McMahon                       Bristow Muldoon (Convener)
Mike Rumbles                           Ms Maureen Watt

Apologies were received from Dr Sylvia Jackson, David McLetchie and Tommy Sheridan.

The meeting opened at 2.01 pm.

1. **Transport and Works (Scotland) Bill:** The Committee took evidence on the general principles of the Bill at Stage 1 from—

   Bruce Rutherford, Scottish Borders Council; and Douglas Muir, Midlothian Council;

   and then from—

   Kevin Murray, Senior Project Manager, Edinburgh Airport Link, TIE Limited; and Susan Clark, Delivery Director, Edinburgh Tram, TIE Limited; and

   and then from—

   Alex Macaulay, Partnership Director of SESTRAN.

The meeting closed at 3.39 pm.
LOCAL GOVERNMENT AND TRANSPORT COMMITTEE

MINUTES

22nd Meeting, 2006 (Session 2)

Tuesday 19 September 2006

Present:

Fergus Ewing (Deputy Convener)  
Bristow Muldoon (Convener)  
Mike Rumbles  
Paul Martin  
Elaine Murray (Committee Substitute)  
Ms Maureen Watt

Apologies were received from Dr Sylvia Jackson, David McLetchie, Michael McMahon and Tommy Sheridan.

The meeting opened at 2.06 pm.

5. **Transport and Works (Scotland) Bill**: The Committee took evidence on the general principles of the Bill at Stage 1 from—

   Richard Evans, Sites Policy Officer, RSPB Scotland, John Thomson, Director of Operations and Strategy (West Areas), SNH and Paul Lewis, Planning Advisory Officer, SNH

   and then from—

   Linda Knarston, Anderson and Goodlad on behalf of Lerwick Port Authority and British Ports Association.

The meeting closed at 3.32 pm.
Present:

Fergus Ewing (Deputy Convener)                               Paul Martin
David McLetchie                                          Michael McMahon
Bristow Muldoon (Convener)                              Mike Rumbles
Tommy Sheridan                                           Ms Maureen Watt

Apologies were received from Dr Sylvia Jackson.

The meeting opened at 2.04 pm.

2. **Transport and Works (Scotland) Bill:** The Committee took evidence on the general principles of the Bill at Stage 1 from—

   Odell Milne, Alison Bourne and Tina Woolnough, objectors to Edinburgh Tram (Line One) Bill

and then from—

   Joanne Teal, Mcgrigors

and then from—

   Ron McAulay, Director, Network Rail Scotland, Nigel Wunsch, Principal Route Planner, Network Rail, Karen Gribben, Legal Advisor, Network Rail

and then from—

   James McCulloch, Chief Reporter, Scottish Executive Inquiry Reporters Unit.

The meeting closed at 4.45 pm.
LOCAL GOVERNMENT AND TRANSPORT COMMITTEE

MINUTES

24th Meeting, 2006 (Session 2)

Tuesday 3 October 2006

Present:

Fergus Ewing (Deputy Convener)            Paul Martin
David McLetchie                             Michael McMahon
Bristow Muldoon (Convener)                 Mike Rumbles
Ms Maureen Watt

Apologies were received from Dr Sylvia Jackson and Tommy Sheridan.

The meeting opened at 2.03 pm.

2. **Transport and Works (Scotland) Bill**: The Committee took evidence on the general principles of the Bill at Stage 1 from—

   Tavish Scott MSP, Minister for Transport, Frazer Henderson Head of Bill Team,
   Andrew Brown, Solicitor OSSE, Catherine Wilson, Solicitor OSSE and Damian Sharp
   Head of Major Projects, Transport Scotland.

4. **Transport and Works (Scotland) Bill (in private)**: The Committee considered the possible contents of its Stage 1 report on the Transport and Works (Scotland) Bill.

The meeting closed at 5.18 pm.
Present:
Fergus Ewing (Deputy Convener) Paul Martin
David McLetchie Michael McMahon
Bristow Muldoon (Convener) Mike Rumbles
Tommy Sheridan Ms Maureen Watt

Also present: Mr Frank McAveety, Margo MacDonald.

Apologies were received from Dr Sylvia Jackson.

The meeting opened at 2.03 pm.

3. Transport and Works (Scotland) Bill (in private): The Committee considered a draft report.

The meeting closed at 5.14 pm.
LOCAL GOVERNMENT AND TRANSPORT COMMITTEE

MINUTES

27th Meeting, 2006 (Session 2)

Tuesday 7 November 2006

Present:

Fergus Ewing (Deputy Convener)  Paul Martin
David McLetchie                  Michael McMahon
Bristow Muldoon (Convener)       Mike Rumbles
Tommy Sheridan                   Ms Maureen Watt

Also present: Mr Frank McAveety, Margo MacDonald.

Apologies were received from Dr Sylvia Jackson.

The meeting opened at 2.07 pm.

5. Transport and Works (Scotland) Bill: The Committee considered a draft Stage 1 Report. The report was agreed to.

The meeting closed at 4.58 pm.
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